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**Datasheet for the decision
of 2 August 2018**

Case Number: T 1001/15 - 3.5.03

Application Number: 10013869.2

Publication Number: 2285160

IPC: H04W36/22

Language of the proceedings: EN

Title of invention:

Triggering migration to a network access agent

Applicant:

Alcatel-Lucent USA Inc.

Headword:

Triggering migration to a network access agent/ALCATEL-LUCENT

Relevant legal provisions:

EPC Art. 83

EPC R. 22

Keyword:

Sufficiency of disclosure - (no)

Registration of transfer (no)

Decisions cited:

G 0002/04, T 0854/12



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1001/15 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 2 August 2018

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 19 January 2015
refusing European patent application No.
10013869.2 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman F. van der Voort
Members: A. Madenach
P. Guntz

Summary of Facts and Submissions

- I. The present appeal is against the decision of the examining division refusing European patent application No. 10 013 869.2, published as EP 2 285 160 A1.

The decision under appeal is a so-called decision according to the state of the file and relates to communications dated 17 December 2013 and 29 October 2014.

In the communication dated 29 October 2014, the examining division expressed its view that claims 1, 2 and 5 introduced subject-matter which extended beyond the content of the application as filed (Articles 76(1) and 123(2) EPC). It further stated, with reference to documents RFC 3344 and RFC 3775, that claims 1, 2, 4, 5, 7 and 10 were not clear (Article 84 EPC) and that the application did not meet the requirements of Article 83 EPC. With respect to the question of novelty and inventive step, reference was made to the earlier of the above communications.

In the communication dated 17 December 2013, the examining division stated that D1 (= WO 01/97549 A1) disclosed that a mobile node sent a regional registration comprising a change of the foreign agent if the mobile node moved from one foreign agent to another one while being idle. Hence, D1 disclosed that a determination at the mobile node and at the foreign agent receiving the regional registration request to migrate the access agent based on the location of the mobile node and the access agent was made at the time the mobile node was reactivated and not before the mobile node was reactivated as claimed. Further, since claim 1 only defined this result to be achieved without

defining the features necessary to achieve the result, the claimed subject-matter did not involve an inventive step (Article 56 EPC).

In the communication dated 29 October 2014 it was further stated that all of the deficiencies applied correspondingly to the claims of the auxiliary request.

- II. In its statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a main request or, in the alternative, an auxiliary request, both as filed with its statement of grounds of appeal. As auxiliary measures it requested remittal of the case to the department of first instance for further examination, and oral proceedings.
- III. In a communication pursuant to Article 15(1) RPBA accompanying a summons to oral proceedings, the board gave its preliminary opinion that, *inter alia*, the claimed invention could not be carried out by the person skilled in the art.
- IV. No substantive reply to the board's communication was received.
- V. With a letter dated 15 June 2018, the patent firm Boco IP Oy Ap informed the EPO that the application underlying the present appeal had been transferred to Provenance Asset Group LLC.

With a letter dated 26 June 2018, the EPO's Legal Division alerted the applicant to deficiencies in the request for entry of a change in the European Patent Register concerning the identity of the applicant, namely that, *inter alia*, an assignment of the present

patent application from Alcatel-Lucent USA Inc. to Provenance Asset Group LLC was missing. The applicant was invited to correct the deficiencies.

VI. Oral proceedings took place on 2 August 2018 in the absence of the appellant.

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

VII. Claim 1 of the main request reads:

"A method, comprising:
determining, at a base station router of a distributed wireless communication system, before an access terminal is re-activated from an idle mode, whether to migrate a network access agent associated with the access terminal based on a location of the access terminal and status information associated with the distributed wireless communication system, wherein the status information includes information indicative of at least one of a group consisting of a measured or projected network load, a planned or unplanned outage, and scheduled maintenance, wherein the network access agent provides at least one of point-of-attachment or care-of-address functionality for the access terminal."

Claim 1 of the auxiliary request differs from claim 1 of the main request in that "at least one of a group consisting of" has been replaced by "at least one of".

Reasons for the Decision

1. *Registration of transfers (Rule 22 EPC)*
 - 1.1 The Legal Division did not register the alleged transfer of the application from Alcatel-Lucent USA Inc. to Provenance Asset Group LLC.
 - 1.2 According to the case law of the Boards of Appeal, the board has to examine the question of party status *ex officio* before dealing with the substance of the case (cf. G 2/04, Reasons 3.2.5). In doing so it is not bound by the assessment of other departments of the EPO or by the state of the register (cf. T 854/12, Reasons 1.2.4 and 1.2.5).

In the case at hand, the board agrees with the Legal Division. Rule 22(1) and (3) EPC stipulates that a transfer has effect vis-à-vis the EPO only at the date when, and to the extent that, documents providing evidence of the transfer have been produced. In the present case, no such evidence has been produced. More specifically, the patent assignment dated 12 September 2017 as submitted with the letter dated 15 June 2018 does not mention the applicant Alcatel-Lucent USA Inc. as one of the assignors. It does not contain a declaration in the name of that company, nor does the list in Annex A of the assignment contain any patents owned by Alcatel-Lucent USA Inc. Consequently, the persons who signed the assignment did not sign in the name of the present applicant. Nor is there any indication that they had power of attorney to do so. The declaration at the end of the list of assignors - "together with their respective affiliates, subsidiaries and related entities under their control"

- on page 1 of the assignment is therefore of no relevance, it being left open whether Alcatel-Lucent USA Inc. is among these entities. The board further notes that, in the absence of a valid debit order, the requirement pursuant to Rule 22(2) EPC regarding the payment of the administrative fee does not appear to have been met either.

The board concludes that the proceedings are to be continued with Alcatel-Lucent USA Inc. as the applicant.

2. *Main request: sufficiency of disclosure (Article 83 EPC)*

2.1 The method of claim 1 comprises, *inter alia*, the feature of determining, at a base station router of a distributed wireless communication network, before an access terminal is reactivated from an idle mode, whether to migrate a network access agent associated with the access terminal. This determination is based, *inter alia*, on a location of the access terminal.

In the framework of IP mobility support for IPv4, location-based access to base station routers is described in RFC 3344, published by Nokia Research Center, August 2002. A corresponding document exists for IP mobility support for IPv6, the teaching of which does not however add anything to the former document with respect to location-based access.

From RFC 3344 (see point 2.4.2.1) it follows that a determination to change registration from one base station router to another is made at the mobile node, i.e. the "access terminal" in the language of claim 1. This presupposes that the mobile node, i.e. the access

terminal, is in an active mode, i.e. not the idle mode.

The board is not aware of any teaching in document RFC 3344 relating to the change of registration of the mobile node from one base station router to another when the mobile node is in the idle mode.

According to the appellant, the change of registration is performed by migrating the network access agent from one base station router to another. There is, however, no mention of the migration of a network access agent in document RFC 3344. The board also notes that document D1 (WO 01/97549 A1), which played a role in the examination proceedings and was also mentioned in the board's communication, does not mention the term "migration" either. Hence, the skilled person would not, using his common general knowledge, be in a position to know how the change of registration of the access terminal from one base station router to another could be performed when the access terminal is in the idle mode.

- 2.2 The application in suit mentions the term "migration" at various instances without, however, giving any explanation or any reference to the prior art as to what is to be understood by "migration" and how it is to be performed. This is particularly true of the migration of a network access agent when the access terminal is in the idle mode, which is considered to be the core of the present invention (cf. column 2, lines 35 to 42, of the application as published). Hence, the skilled person would not, on the basis of the explanations in the description or possible references to the prior art, be in a position to know how a migration of the network access agent could be

performed, in particular with the access terminal in the idle mode.

- 2.3 For the above reasons, the application does not disclose the invention as claimed in claim 1 in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, contrary to the requirements of Article 83 EPC. The request is therefore not allowable.

3. *Auxiliary request*

The modified wording of claim 1 of the auxiliary request (see point VII above) does not affect the reasoning given above in respect of claim 1 of the main request. The auxiliary request is therefore not allowable either.

4. Since, for the reasons set out above, neither of the requests is allowable, remittal to the department of first instance would serve no purpose. The further auxiliary request that the case be remitted to the department of first instance is therefore not allowed either. The appeal is thus to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated