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**Datasheet for the decision
of 31 July 2019**

Case Number: T 2212/15 - 3.5.03

Application Number: 09722220.2

Publication Number: 2277274

IPC: H04H20/34, H04H40/18

Language of the proceedings: EN

Title of invention:

COMMON INTERFACE PROTOCOL FOR SENDING FM-RDS MESSAGES IN
WIRELESS COMMUNICATION SYSTEMS

Applicant:

QUALCOMM Incorporated

Headword:

Wireless communication system/QUALCOMM

Relevant legal provisions:

RPBA Art. 12(4)

Keyword:

Both requests not admitted as they could have been filed in
first instance proceedings

Decisions cited:

G 0010/93, T 1685/07



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Case Number: T 2212/15 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 31 July 2019

Appellant: QUALCOMM Incorporated
(Applicant) Attn: International IP Administration
5775 Morehouse Drive
San Diego, CA 92121 (US)

Representative: Tomkins & Co
5 Dartmouth Road
Dublin 6 (IE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 16 July 2015
refusing European patent application No.
09722220.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman K. Schenkel
Members: T. Snell
R. Winkelhofer

Summary of Facts and Submissions

- I. The present appeal was filed against the decision of the examining division refusing European patent application no. 09722220.2, with publication no. WO 2009/117715 A1, on the ground that claim 1 of each of a main request and an auxiliary request was not clear and its subject-matter did not involve an inventive step with respect to the disclosure of the document US 2007/0155311 (D1).
- II. The appellant requests that the decision under appeal be set aside and a patent granted on the basis of either the main request or the first auxiliary request both as filed together with the statement of grounds of appeal.
- III. In a communication accompanying a summons to oral proceedings, the board raised doubts that either request was admissible in accordance with Article 12(4) RPBA. The board also raised issues concerned with Articles 83, 84, 123(2), 52(1) and 56 EPC.
- IV. Oral proceedings were held in the absence of the appellant, who had indicated shortly before that it would not attend. At the end of the oral proceedings, the chairman announced the board's decision.
- V. In view of the board's reasons (see below), it is not necessary to quote the wording of any of the claims.

Reasons for the Decision

1. *Main request and first auxiliary request - admissibility (Article 12(4) RPBA)*

- 1.1 It is at the discretion of the board to not admit requests which could have been filed before the first instance (cf. Article 12(4) RPBA).

- 1.2 In the present case, claim 1 of each request comprises a new feature included for the first time in an independent claim, and the appellant's case with respect to inventive step relies principally on these new features. However, this constitutes in each case a new factual framework which has never before been discussed with the examining division ("fresh case"). If the requests were admitted, the board would have to rule on these matters for the first time, or otherwise remit the case to the examining division. The primary purpose of ex parte appeal proceedings is however to examine the correctness of the decision (cf. G 10/93, OJ 1995, 172, point 4 of the reasons), and not to provide the applicant/appellant with the opportunity to present an entirely fresh case for examination by the board of appeal.

- 1.3 *Re claim 1 of the main request:*
 - 1.3.1 A new feature added ("incorporating a plurality of encryption components each suitable for one of a plurality of wireless carriers of packet data services to receive radio data system, RDS, interactive services") was originally claimed in claim 5 of the application as filed, which became claim 4 of the main request refused by the examining division. The examining division refers in the impugned decision to the feature of claim 4 as being disclosed in D1 (cf. point 43 of the reasons), based on an assessment first set out in the International Preliminary Examination Report. That apart, apparently the merits of this feature played no role in the examination proceedings

whatsoever. Now, for the first time, the appellant argues that the examining division's assessment is erroneous. However, if the applicant had been interested in seeking protection for this embodiment, it should have filed a corresponding request during the examination proceedings in order that the inventiveness of this embodiment could be properly discussed, including the applicant's challenging the assessment that this feature was disclosed in D1.

1.3.2 Furthermore, the inclusion of this feature now gives rise to new issues based on Articles 83, 84, 123(2), 52(1) and 56 EPC, as set out in the board's preliminary opinion. The appellant has not replied in substance to the board's preliminary opinion. There is therefore, prima facie, no prospect that the main request would be allowable if it were to be admitted.

1.4 *Re claim 1 of the first auxiliary request:*

1.4.1 A new feature added ("wherein the tagged data message at least includes an identifier associated with the at least one broadcaster, and the interactive client determines a relationship between the at least one broadcaster and the wireless carrier based on the identifier") is taken from the description only, and therefore may not have been the subject of a search. Clearly, if the applicant had been interested in seeking protection for such an embodiment, it should have filed a corresponding request during examination proceedings in order that, if necessary, a supplementary search could be carried out and the claimed subject-matter examined in respect of, inter alia, inventive step.

- 1.4.2 Furthermore, point 1.3.2 above applies, *mutatis mutandis*.
- 1.4.3 It is further to be noted that the two requests do not form a convergent set of requests, i.e. claim 1 of the first auxiliary request does not further develop or narrow the scope of claim 1 of the main request. In accordance with case law, auxiliary requests are expected to be convergent with the higher ranking requests, especially when the matter at issue is inventive step (cf. T 1685/07, point 6.5 ff. of the reasons).

2. *Conclusion*

In view of the above reasons, neither the main request nor the first auxiliary request is admitted to the appeal proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Rauh

K. Schenkel

Decision electronically authenticated