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**Datasheet for the decision
of 20 May 2021**

Case Number: T 1228/17 - 3.5.05

Application Number: 07751936.1

Publication Number: 1994696

IPC: H04L12/56, H04L12/28

Language of the proceedings: EN

Title of invention:
WIRELESS MESH NETWORKS

Applicant:
Rosemount, Inc.

Headword:
Conflicts scheduling in overlapping networks/ROSEMOUNT

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 13(2)

Keyword:
Main request - First auxiliary request - added subject-matter (yes)
Second and third auxiliary requests - Amendment after summons - cogent reasons (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 1228/17 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 20 May 2021

Appellant:
(Applicant)

Rosemount, Inc.
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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 18 November
2016 refusing European patent application No.
07751936.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair

A. Ritzka

Members:

P. Cretaine

E. Mille

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division posted on 18 November 2016 refusing European patent application No. 07751936.1. The application was refused for lack of inventive step (Article 56 EPC) having regard to the disclosure of:

D1: WO 01/41348.

During the course of the examination, the following document had also been cited:

D5: US 2004/0208152

- II. The notice of appeal was received on 27 January 2017, and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 28 March 2017. The appellant requested that the decision be set aside and that a patent be granted based on an amended set of claims filed with the statement setting out the grounds of appeal.
- III. A summons to oral proceedings was issued on 12 May 2020. In a communication pursuant to Article 15(1) RPBA, sent on 26 May 2020, the board gave its preliminary opinion that the set of claims did not meet the requirements of Article 56 EPC in light of the disclosure of D5 in combination with D1. In a further communication sent on 19 February 2021, the board indicated a further point to be discussed in relation to Article 123(2) EPC during the forthcoming oral proceedings.

- IV. Responding by letter dated 20 April 2021, the appellant submitted a new set of amended claims to replace the previously filed claims as the main request and put forward arguments with respect to the requirements of Articles 56 and 123(2) EPC.
- V. Oral proceedings were held on 20 May 2021. The appellant submitted another two new sets of claims, one set according to a second auxiliary request and the other according to a third auxiliary request. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims submitted as the main request with its letter dated 20 April 2021 or, alternatively, the claims of the first auxiliary request, as filed with the statement setting out the grounds of appeal, or the claims of the second or third auxiliary request submitted during the oral proceedings. The board's decision was announced at the end of the oral proceedings.
- VI. Claim 1 according to the main request reads as follows:
- "A wireless network including
a first wireless mesh network (Net B) including a first gateway (GWB) and a first plurality of nodes (14, 16) in which the first gateway and the first plurality of nodes transmit and receive messages according to a first communication schedule unique to the first wireless mesh network, wherein each of the first plurality of nodes is configured to route messages for itself as well as other devices wherein messages hop from node to node through the first wireless mesh network; and
a second wireless mesh network (Net A) including a second gateway (GWA) and a second plurality of nodes

(12, 14) in which the second gateway and the second plurality of nodes transmit and receive messages according to a second communication schedule unique to the second wireless mesh network, wherein each of the second plurality of nodes is configured to route messages for itself as well as other devices wherein messages hop from node to node through the second wireless mesh network, and wherein, within the first wireless mesh network the first communication schedule that is unique to the first wireless mesh network is maintained by the first gateway (GWB); and within second wireless mesh network the second communication schedule that is unique to the second wireless mesh network is maintained by the second gateway (GWA), wherein the first and second mesh networks at least partially overlap so that at least one common node (14) is a member of both the first plurality of nodes and the second plurality of nodes and communicates with the first gateway through the first wireless mesh network and communicates with the second gateway through the second wireless mesh network, the at least one common node operating on both the first communication schedule and the second communication schedule, and the wireless network characterized in that schedule conflicts between the first communication schedule and the second communication schedule, which arise as the at least one common node attempts to serve the gateways (GWB, GWA) of the first and second wireless mesh networks (Net B, Net A), are dealt with by the at least one common node and thereby the gateways (GWB, GWA) maintain their unique communication schedules as assigned by said first and second wireless mesh networks to the at least one common node."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that:

- the wording "and wherein within the first wireless mesh network" has been replaced with the wording "the wireless network characterized in that within the first wireless mesh network",
- the wording "and wherein schedule conflicts between the first communication schedule and the second communication schedule" has been replaced with the wording "the wireless network characterized in that schedule conflicts between the first communication schedule and the second communication schedule", and
- the wording "their unique communication schedules as assigned by said first and second wireless mesh networks to the at least one common node" has been replaced with the wording "their unique communication schedules as assigned to the at least one common node".

Claim 1 of the second auxiliary request differs from claim 1 of the main request in that the wording "the gateways (GWB, GWA) maintain their unique communication schedules" has been replaced with the wording "the gateways (GWB, GWA) have the ability to maintain their unique communication schedules".

Claim 1 of the third auxiliary request differs from claim 1 of the first auxiliary request in that the wording "the gateways (GWB, GWA) maintain their unique communication schedules" has been replaced with the wording "the gateways (GWB, GWA) have the ability to maintain their unique communication schedules".

Reasons for the Decision

1. Main request - Article 123(2) EPC

Claim 1 recites that schedule conflicts between the first communication schedule and the second communication schedule, which arise as the at least one common node attempts to serve the gateways of the first and second wireless mesh networks, are dealt with by the at least one common node and thereby the gateways maintain their unique communication schedules as assigned by said first and second wireless mesh networks to the at least one common node.

The application documents as originally filed do not disclose that the gateways maintain their communication schedules when schedule conflicts are dealt with. The only passage in the whole application that deals with schedule conflicts is on page 6, lines 14 to 21, where the gateways are defined as having the ability to maintain their unique schedule. However, it is not stated in this passage that the gateways maintain their unique schedules when scheduling conflicts are resolved.

The appellant argued that literal support was provided on page 6, lines 14 to 21, and that it was merely incomplete. The appellant further argued that there was no requirement for the description and claims to match each other word for word. It contended that the application as a whole taught the skilled person that the nodes alone dealt with schedule conflicts, i.e. resolved the schedule conflicts, such that the gateways were not involved in the process and thereby maintained their unique communication schedules.

The board is not convinced by these arguments.

Firstly, the term "deal with" is not synonymous with "resolve". Thus, the quoted passage discloses only that the nodes are involved in the schedule conflict resolution, but not that they resolve the schedule conflicts by themselves. Secondly, the quoted passage refers broadly to examples of conflict resolution schemes that may be used ("pre-definable or by user definable priority assignments", "first come/first served availability", "mutually agreeable resolution", "multifunctional methods"), but does not explain how these schemes should operate. In particular, it does not give the skilled person any indication that the unique schedules of the gateways are kept unchanged as a result of the conflict resolution.

For these reasons, the board holds that claim 1 does not meet the requirements of Article 123(2) EPC.

2. First auxiliary request

Claim 1 recites that schedule conflicts between the first communication schedule and the second communication schedule, which arise as the at least one common node attempts to serve the gateways (GWB, GWA) of the first and second wireless mesh networks (Net B, Net A), are dealt with by the at least one common node and thereby the gateways (GWB, GWA) maintain their unique communication schedules as assigned to the at least one common node.

It thus discloses, in the same way as claim 1 of the main request, that the gateways maintain their communication schedules when schedule conflicts are dealt with.

For the same reasons as detailed above in point 1, therefore, the board holds that claim 1 does not meet the requirements of Article 123(2) EPC.

3. Second and third auxiliary requests

These requests were submitted during the oral proceedings before the board, and thus at a late stage in the appeal proceedings.

In claim 1 of these requests, the feature reciting that the gateways maintain their unique communication schedules has been replaced by the feature that the gateways have the ability to maintain their unique communication schedules. The appellant argued that this amendment was a direct response to the board's comment relating to the requirements of Article 123(2) EPC in its communication of 19 February 2021.

The board notes, however, that the appellant had already filed the amended claims according to the main request dated 20 April 2021 in response to that communication. Although the appellant made observations in respect of Article 123(2) EPC, it chose not to amend the feature objected to, which was clearly identified in point 6.1 of the communication.

Moreover, the board found at the oral proceedings that the above-mentioned amendment was not *prima facie* capable of overcoming the inventive-step objection (Article 56 EPC) raised in its communications.

For these reasons, the board decided at the oral proceedings not to admit the second and third auxiliary requests into the appeal proceedings

(Article 13(2) RPBA 2020).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated