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**Datasheet for the decision
of 28 April 2021**

Case Number: T 2372/18 - 3.5.05

Application Number: 07821019.2

Publication Number: 2074728

IPC: H04L1/00, H04L1/02

Language of the proceedings: EN

Title of invention:

METHOD FOR TRANSMITTING A STREAM OF DATA IN A WIRELESS SYSTEM
WITH AT LEAST TWO ANTENNAS AND TRANSMITTER IMPLEMENTING SAID
METHOD

Applicant:

InterDigital CE Patent Holdings

Headword:

Space-time coding/InterDigital

Relevant legal provisions:

RPBA Art. 12(4)

Keyword:

Late-filed facts - request identical to request not admitted
in first instance proceedings - admitted (no)

Decisions cited:

Catchword:



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 2372/18 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 28 April 2021

Appellant: InterDigital CE Patent Holdings
(Applicant) 3 rue du Colonel Moll
75017 Paris (FR)

Representative: Novagraaf Technologies
12 place des Halles Saint Louis
56100 Lorient (FR)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 12 April 2018
refusing European patent application No.
07821019.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: P. Cretaine
D. Prietzel-Funk

Summary of Facts and Submissions

- I. This appeal is against the examining division's decision posted on 12 April 2018 refusing European patent application No. 07821019.2. A sole request was not admitted into the examination proceedings under Rule 137(3) EPC, and therefore the application was refused for not fulfilling the requirements of Article 78(1)(c) EPC.
- II. The notice of appeal was received on 11 June 2018 and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was received on 9 August 2018. The appellant requested that the decision be set aside and that a patent be granted based on the set of claims on which the decision was based and which was refiled with the statement setting out the grounds of appeal.
- III. A summons to oral proceedings was issued on 11 November 2020. In a communication pursuant to Article 15(1) RPBA, sent on 26 November 2020, the board gave its preliminary opinion that, *inter alia*, it was not minded to admit the set of claims on file into the appeal proceedings under Article 12(4) RPBA 2007.
- IV. With a letter dated 21 January 2021, the appellant informed the board that it would not attend the oral proceedings scheduled for 15 March 2021.
- V. With a communication dated 28 January 2021, the board announced that the oral proceedings were cancelled.

VI. The appellant requested that the decision under appeal be set aside and that a patent be granted based on the set of claims 1 to 14 filed on 21 February 2018.

VII. Claim 1 according to the sole request reads as follows:

"Method for transmitting a stream of data in a communication system comprising a transmitter with at least two antennas, said method comprising the steps of:

- dividing the stream of data elements in first words of k bits,
- encoding the first words with a non binary code, the first words being the symbols of the non binary code and the size (k) in bits of the code symbols dividing the number of bits per space-time codeword,
- interleaving the encoded symbols by a symbol wise interleaver wherein the symbol wise interleaver is such that the errors on a space-time codeword are spread on as many non binary codewords as possible,
- splitting the interleaved bit stream thus obtained into groups of $\log_2(M)$ bits,
- mapping the groups of $\log_2(M)$ bits onto complex symbols using a constellation of M points, then
- coding the complex symbols using a perfect space-time code to obtain space-time code words."

The request comprises further independent claims directed to a corresponding transmitter (claim 12) and a corresponding receiver (claim 14).

Reasons for the Decision

1. The new RPBA entered into force on 1 January 2020 (Article 25(1) RPBA 2020).

However, Article 12(4) to (6) RPBA 2020 does not apply to any statement setting out the grounds of appeal filed before 1 January 2020. Instead, Article 12(4) RPBA 2007 continues to apply to these submissions (Article 25(2) RPBA 2020).

2. Admissibility - Article 12(4) RPBA 2007

The set of claims 1 to 14 has not been admitted into the proceedings before the department of first instance.

The set of claims was filed in the proceedings before the department of first instance in response to the summons to oral proceedings. The claims differed from the previous claims on which the communication annexed to the summons was based only in that claim 1 was a combination of the previous claim 1 and the previous dependent claim 2. An objection under Article 56 EPC had been raised in the above-mentioned communication against both of the previous claims 1 and 2; however, the board notes that the then applicant had not explained why, in its view, the introduction of the features of the previous claim 2 into the previous claim 1 would have overcome the inventive-step objection raised by the examining division. Moreover, a novelty objection had been raised by the examining division against the independent receiver claim (claim 14 corresponding to the previous claim 15). The board notes that the then applicant had not addressed this objection.

The board thus holds that the examining division correctly exercised its discretion under Rule 137(3) EPC not to admit the set of claims into the examination proceedings.

The appellant did not present any argument with respect to the admissibility of the claims on appeal. Moreover, the appellant did not provide further arguments with respect to inventive step but merely again repeated the arguments that were already present in its response to the summons to oral proceedings issued by the examining division.

For these reasons, the board decides not to admit the set of claims into the appeal proceedings under Article 12(4) RPBA 2007.

3. Therefore, the application does not comprise any admitted set of claims. Therefore, the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Götz-Wein

A. Ritzka

Decision electronically authenticated