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**Datasheet for the decision
of 21 June 2023**

Case Number: T 0544/21 - 3.5.05

Application Number: 17169942.4

Publication Number: 3244564

IPC: H04L1/18

Language of the proceedings: EN

Title of invention:
DSL RETRANSMISSION DEVICES

Applicant:
Lantiq Beteiligungs-GmbH & Co. KG

Headword:
DSL RETRANSMISSION DEVICES

Relevant legal provisions:
EPC Art. 54

Keyword:
Novelty - (no)



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Case Number: T 0544/21 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 21 June 2023

Appellant: Lantiq Beteiligungs-GmbH & Co. KG
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Representative: 2SPL Patentanwälte PartG mbB
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 12 January 2021
refusing European patent application No.
17169942.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair A. Ritzka
Members: N. H. Uhlmann
E. Mille

Summary of Facts and Submissions

I. The applicant appealed against the examining division's decision to refuse the European patent application in suit.

The examining division decided that the main request and the auxiliary request did not meet the requirements of Article 54 EPC.

II. The examining division made reference, *inter alia*, to the following documents:

D1 US 2008/063007

D2 US 2005/286424

D3 "Retransmission at gamma interface for PTM; BF-xyz", ITU-T DRAFT; STUDY PERIOD 2005-2008, INTERNATIONAL TELECOMMUNICATION UNION, GENEVA; vol. 4/15, 28 November 2007, pages 1-5

III. With the statement setting out the grounds of appeal the appellant maintained and resubmitted the requests underlying the decision under appeal.

IV. The board summoned the appellant to oral proceedings.

In a communication under Article 15(1) RPBA, the board set out its provisional opinion on the case.

V. At the oral proceedings, which took place as scheduled, the allowability of the requests on file was discussed with the appellant.

VI. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of the main request or, alternatively, of the auxiliary request, both requests being those on which the impugned decision was

based. These requests were refiled with the statement setting out the grounds of appeal.

VII. Claim 1 of the main request is worded as follows:

"A Digital Subscriber Line, DSL, transmitter device (102) comprising:

circuitry configured to generate time-marker information for a data unit, wherein the time-marker information indicates a point in time; and

a buffer (108) configured to store the time-marker information at the transmitter device,

wherein the circuitry is configured to initiate transmission of a data unit including the time-marker information over a subscriber line,

wherein the circuitry is configured to initiate retransmission of the data unit including the time-marker information over the subscriber line based on a request for retransmission, wherein the circuitry is configured to transmit over bonded data links."

VIII. Claim 1 of the auxiliary request is based on claim 1 of the main request but states that "the time-marker information indicates a time stamp" instead of "the time-marker information indicates a point in time".

Reasons for the Decision

1. The application in the present case pertains to DSL transmitter and receiver devices. A time-marker information which indicates a point in time is generated for a data unit and stored at the transmitter device. The data unit and the time-marker information are transmitted over bonded data links. Upon request,

the data unit and the time-marker information are retransmitted.

2. Document D3 discloses techniques for transmission and retransmission of data over bonded links.

Main request

3. Novelty
 - 3.1 The examining division decided that document D3 disclosed all features of the subject-matter of claim 1.
 - 3.2 The appellant argued that D3 did not disclose that the time-marker information **"indicates a point in time"**. Instead, D3 disclosed a sequence number which only defined a position within a sequence of data units but did not provide information on a point in time.
 - 3.3 The board agrees with the appellant that the main contentious issue for assessing patentability concerns the interpretation of the claimed feature **"the time-marker information indicates a point in time"** and the corresponding disclosure in D3.
 - 3.4 The appellant did not submit any specific arguments as to how a skilled person would understand the above-mentioned feature. In fact, the appellant appears to assume that the feature "time-marker information" as claimed indicates an exact point in time. The board understands this to mean that the point in time includes information specifying a point in time in the physical sense, e.g. in seconds, milliseconds and microseconds (or, as submitted by the appellant at the first-instance oral proceedings, in hours and minutes).
 - 3.5 The description of the application does not provide support for this interpretation.

Instead, according to page 12, lines 12 to 19, "the time-marker information may be determined to be the sequence number" and this "time-marker information **marks a time** the data would be send" (emphasis added). This passage clearly teaches that a sequence number may indicate a point in time.

This understanding is confirmed on page 11, lines 11 to 33. According to this passage, the time-marker information is based on sequence numbering, the numbered sequence of symbols or codewords "can serve as a common time basis" for the transmitter and the receiver, and the time basis "can be provided solely based on existing processing in the transmitter". Furthermore, it was not necessary to implement an additional time basis. In other words, a time basis centred on, e.g., physical time was not necessary.

3.6 Claim 1 does not specify any details regarding the point in time indicated by the time-marker information.

3.7 In view of the above observations the board confirms the finding in the impugned decision that document D3 anticipates all features of the subject-matter of claim 1.

3.8 Thus, the subject-matter of claim 1 is not novel.

Auxiliary request

4. Novelty

4.1 Claim 1 is based on claim 1 of the main request but refers to a "time stamp" instead of a "point in time".

4.2 The appellant argued that this amendment was carried out "in order to define unambiguously that the time-marker information indicates an exact point in time". It referred furthermore to its arguments concerning the main request.

4.3 According to page 8, lines 9 to 15 (the sole passage in the description forming the basis for a time stamp), the terms "time stamp" and "point in time" relate to the same technical feature. Thus, the board's reasoning given above with regard to the main request apply similarly to claim 1 of the auxiliary request.

4.4 At the oral proceedings the appellant additionally stated that Figure 2 also referred to a "time stamp" in steps 202, 204 and 210. The appellant pointed to the passage on page 10, lines 9 to 25, which explained Figure 2.

The appellant argued that the passage on page 8, lines 9 to 15 defined a general embodiment, pertaining to "time-marker information", and two more specific and distinct embodiments:

- first embodiment, in which the "time-marker information" indicated a "time-marker"; and
- second embodiment, in which the "time-marker information" indicated a "timestamp".

According to the appellant, claim 1 of the auxiliary request was based on the second embodiment. "Time stamp" was a clear and unambiguous term in the art, for which no further explanation in the description was needed and which was different from the sequence number disclosed in D3.

Additionally, the appellant stated that the description referred - on page 8, lines 27 to 33 - to a disadvantage of the sequence number, namely that it may lead to varying time intervals between time units.

4.5 These arguments fail to convince the board.

The passage on page 8, lines 9 to 15 of the description reads:

"Referring to Fig. 1, the device 102 includes a first entity 106 to generate time-marker information indicating a time-marker or timestamp for a data unit (fragment). As will be described in more detail below, the time-marker be any information which is capable to indicate a point of time, for example a point in time when the data unit passes a predetermined point in the process flow."

In the board's view, the terms "time-marker" and "timestamp" are used as synonyms in the above passage on page 8 (connected by the conjunction "or") and in the application as a whole, i.e. they embody the same technical teaching and do not define distinct embodiments. This conclusion follows clearly from Figure 2 and the corresponding description passage on page 10, lines 9 to 25. Steps 202, 204 and 210 in Figure 2 refer to "timestamp information", and the description of the same steps in the passage on page 10 refers to "time-marker information".

It is correct that "time stamp" might mean a precise point in time. However, the description does not provide any support for such interpretation of this term, as explained above with regard to the main request. On the contrary, the description refers throughout to a sequence number.

With regard to the alleged disadvantage of the sequence number, the board notes that the description does not classify the varying time intervals between time units as a disadvantage to be addressed by the invention. On the contrary, the varying time intervals are described as a feature present "in embodiments".

In view of these explanations, the board holds that the sequence number disclosed in document D3 anticipates the claimed "time stamp".

4.6 Consequently, the board confirms the finding in the decision under appeal that the subject-matter of claim 1 is not novel.

Conclusion

Since none of the requests is allowable, the appeal must 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