

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 26 April 2024**

Case Number: T 1026/22 - 3.5.05

Application Number: 15905073.1

Publication Number: 3343983

IPC: H04W48/16

Language of the proceedings: EN

Title of invention:

Channel transmission method and base station, and user equipment

Applicant:

Huawei Technologies Co., Ltd.

Headword:

LTE-based Internet of Things/HUAWEI

Relevant legal provisions:

RPBA 2020 Art. 12(4), 12(6)

Keyword:

Admittance of claim amendments filed on appeal (no) - should have been filed earlier



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 1026/22 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 26 April 2024

Appellant: Huawei Technologies Co., Ltd.
(Applicant) Huawei Administration Building
Bantian
Longgang District
Shenzhen, Guangdong 518129 (CN)

Representative: Goddar, Heinz J.
Boehmert & Boehmert
Anwaltspartnerschaft mbB
Pettenkoferstrasse 22
80336 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 9 December 2021
refusing European patent application
No. 15905073.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: P. Cretaine
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. This appeal is against the examining division's decision refusing the present European patent application. The application was refused for non-compliance with Articles 123(2) and 84 EPC and lack of novelty (Article 54 EPC).
- II. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of a **main request** or **first to third auxiliary requests**, all filed for the first time with the statement setting out the grounds of appeal.
- III. A summons to oral proceedings was issued. In a communication pursuant to Article 15(1) RPBA, the board announced that it was minded not to admit the main request and the first to third auxiliary requests into the appeal proceedings under the provisions of Article 12(4) RPBA. Additionally, the board expressed the opinion that even if the main request and the first to third auxiliary requests were admitted into the appeal proceedings, they would not comply with Articles 84 and 123(2) EPC.
- IV. In response to the board's communication, the appellant informed the board that it would not be attending the scheduled oral proceedings. Furthermore, the appellant withdrew its request for oral proceedings and requested a "decision based on the state of the file".
- V. The oral proceedings were then cancelled.
- VI. Claim 1 of the **main request** reads as follows:

"A channel transmission method, comprising:
determining (201), by a base station, a communication mode to be used between the base station and a terminal device;
determining (202), by the base station, a transmission parameter set, which comprises a transmission parameter of a broadcast channel and a transmission parameter of a reference signal according to the determined communication mode, wherein the communication mode and the transmission parameter set are in a one-to-one correspondence, and the transmission parameter set at least comprises bit information in the broadcast channel which is used to indicate the communication mode; and
transmitting (203), by the base station, the broadcast channel and the reference signal in accordance with the transmission parameter set to the terminal device;
wherein the communication mode comprises one of the following modes: a legacy mode, an in-band mode, a guardband mode, or a standalone mode, wherein the legacy mode is an LTE air interface standard, an in-band mode is a mode that is used in a transmission bandwidth of a legacy carrier for communication, a guardband mode is a mode that is used in a guard bandwidth of a legacy carrier for communication, and a standalone mode is a mode that is used on a frequency resource of a non-legacy carrier."

Claim 1 of the **first auxiliary request** adds at the end of claim 1 of the main request the following wording:

"wherein the transmission parameter of the broadcast channel comprises at least one of the following information: a sequence used by the broadcast channel, a time resource used for transmitting the broadcast channel, a frequency

resource used for transmitting the broadcast channel, a spatial coding matrix used by the broadcast channel, or a scrambling code used for scrambling information in the broadcast channel; and/or
the transmission parameter of the reference signal comprises at least one of the following information: a sequence used by the reference signal, a time resource used for transmitting the reference signal, a frequency resource used for transmitting the reference signal, a spatial coding matrix used by the reference signal, or a scrambling code used for scrambling information in the reference signal."

Claim 1 of the **second auxiliary request** adds at the end of claim 1 of the main request the following wording:

"wherein the transmission parameter of the broadcast channel comprises at least one of the following information: a sequence used by the broadcast channel, a spatial coding matrix used by the broadcast channel, or a scrambling code used for scrambling information in the broadcast channel; and/or
the transmission parameter of the reference signal comprises at least one of the following information: a sequence used by the reference signal, a spatial coding matrix used by the reference signal, or a scrambling code used for scrambling information in the reference signal."

Claim 1 of the **third auxiliary request** reads as follows:

"A channel transmission method, comprising:

determining (201), by a base station, a first communication mode to be used between the base station and terminal device in a first period and a second communication mode to be used between the base station and the terminal device in a second period;

determining (202), by the base station, a transmission parameter set of a first channel according to the determined communication mode, wherein the communication mode and the transmission parameter set of the first channel are in a one-to-one correspondence; and

transmitting (203), by the base station, the first channel to the terminal device,

wherein the first communication mode is a legacy mode being used in a transmission bandwidth of a legacy carrier and the second communication mode is a guardband mode being used in a guard bandwidth of the legacy carrier for communication, which part of bandwidth of the legacy carrier is not used to transmit data or other signals in the first communication mode."

Reasons for the Decision

1. All claim requests - admittance (Article 12 RPBA)
- 1.1 The **main request** and the **first to third auxiliary requests** were filed for the first time with the statement setting out the grounds of appeal. The claims of these requests have been amended with respect to the claims of a sole request on which the decision under appeal was based.
- 1.2 In view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, an appellant's appeal case must be directed to

the requests on which the decision under appeal was based (Article 12(2) RPBA). Any part of an appellant's appeal case which does not meet this requirement is to be regarded as an "amendment" within the meaning of Article 12(4) RPBA, unless the appellant demonstrates that this part was admissibly raised and maintained in the proceedings leading to the decision under appeal. Any such amendment may be admitted only at the discretion of the board.

1.3 In the present case, the contested decision is not based on the present main and auxiliary requests. Therefore, they are "amendments" within the meaning of Article 12(4), first sentence, RPBA.

1.4 The appellant argued that the amendments to the claims "became clear to the applicant only after studying the grounds of the decision of the examining division, thus could not be presented in the first-instance proceedings".

However, the board notes that the examining division, in a consultation by telephone on 29 September 2021, informed the appellant of the reasons why the claims were not allowable. In addition, in a communication sent 5 October 2021, these reasons were communicated to the appellant in writing. It is noted that these reasons are the same as the reasons on which the decision under appeal is based. Therefore, the appellant could and indeed should have submitted the present main and auxiliary requests already in the examination proceedings (cf. Article 12(6), second sentence, RPBA).

1.5 Furthermore, as to the **third auxiliary request**, by removing in claim 1 features *inter alia* related to the

"transmitter parameter set", this claim request is not convergent with the main request and the first and second auxiliary requests, i.e. it does not develop the claimed subject-matter in a consistent direction. Hence, the respective amendments are not suitable to address the relevant issues which led to the decision under appeal (cf. Article 12(4), fifth sentence, RPBA).

- 1.6 For these reasons, the board has decided not to admit the main request and the first to third auxiliary requests into the appeal proceedings (Article 12(4) and 12(6) RPBA).
2. There being no admitted claim request on file, the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated