

0. **Oral Proceedings** are to be held in the present opposition case.

1. The European patent No. **EP 1 361 707** is based upon European patent application No. 03010042.4, date of filing: 02.05.2003, claimed priority: USP 380106 filed on 06.05.2002.

The mention of the grant of the patent has been published in European Patent Bulletin of 07.02.2007.

Proprietor of the patent is Innovative Sonic Limited.

Notice of opposition against the patent as a whole has been filed by

Opponent: Telefonaktiebolaget LM Ericsson (publ) on 07.11.2007.

The following **evidence** has been submitted within the opposition period:

(i) Documents published before the priority date:

A1 ETSI TS 125 322 V3.10.0 (2002-03), *Universal Mobile Telecommunications System (UMTS); Radio Link Control (RLC) protocol specification (3GPP TS 25.322 version 3.10.0 Release 1999)*, published in March 2002;

A4 ETSI TS 125 331 V3.10.0 (2002-03), *Universal Mobile Telecommunications System (UMTS); Radio Resource Control (RRC) protocol specification (3GPP TS 25.331 version 3.10.0 Release 1999)*, published in March 2002 - title page, pages 1-2, 25-29, 204-205;

A5 WO 00/57594, published on September 28, 2000;

(ii) Documents published within the priority period:

A2 3GPP TSG-RAN WG2 Meeting #29, Change Request Tdoc R2-020910, Gyeongju, Korea, 13-17 May 2002, made available to the public on the 3GPP_TSG_RAN_WG2 mailing list (URL of Archives May 2002:

http://list.etsi.org/scripts/wa.exe?A1=ind0205&L=3gpp_tsg_ran_wg2) by email (A2b) on May 8, 2002, published on the ETSI web site, and also available at said meeting;

A2b Sam Jiang, "Subject: ASUSTeK tdocs for the RAN2 #29 meeting (Set 1)", email of May 8, 2002 at 08:53:06 to the 3GPP TSG RAN Working Group 2, and containing attached file R2-020910.zip, retrieved from the URL address:

http://list.etsi.org/scripts/wa.exe?A2=ind0205&L=3gpp_tsg_ran_wg2&T=0&P=6267

A3 3GPP TSG-RAN WG2 Meeting #29, Change Request Tdoc R2-021218, Gyeongju, Korea, 13-17 May 2002, made available to the public at said meeting on May 16, 2002.

2. The matters to be discussed at the Oral Proceedings may include:

- whether the claimed priority is valid;
- the grounds of opposition raised by the Opponent:

Article 100 (a) EPC and

Article 100 (c) EPC

in relation to the granted claims.

3. In accordance with **Rule 116(1) EPC**, written submissions in preparation for the Oral Proceedings should be submitted by the date indicated on the first page of these Summons. Any request from the Proprietor for maintenance in amended form should also be submitted by that date. Under **Rule 116(1) EPC**, new facts and evidence presented after that date need not be considered.

In order to allow a positive decision at the oral proceedings, all requests to maintain the patent in amended form must be completed by the necessary modifications to the description in order to harmonise it with the amended claims.

The following points *inter alia* may be of particular interest in preparing for the Oral Proceedings.

4. Concerning the claimed priority, its validity being questioned by the Opponent, the Opposition Division is of the provisional opinion that it may indeed not be valid.

Although the priority document does mention - as put forward by the Proprietor - e.g. the expression "several abnormal conditions" (first page, first line of the last paragraph) and discusses several possible "techniques [...] to monitor any error occurring during transmission and to maintain synchronization between [the Sender and the Receiver]" (see previous paragraph on that same first page), this is all done when discussing the general background of the alleged invention. However, when it comes to the stated "Problem of the prior art" (starting on page 3), said document exclusively mentions *one single*, particular status related field matching *one* abnormal

condition, and not just [any]one particular field matching *one of a plurality* of abnormal conditions (as claimed); namely the length indicator having a non-allowable value ("invalid or reserved"). The same is the case with respect to the description of the invention. Given the very specific mechanisms relating to the treatment of the different fields contained in the data blocks (or PDUs) as described in the standard disclosed in document A1 - which is at the basis of the alleged invention - the Division tends, at the present stage, towards not agreeing with the Proprietor's argument that the length indicator is just one example of possible status related field among others to which the invention may apply. As can be seen in A1, every field in a PDU has a very specific role in the framework of the Radio Link Control Protocol and requires a specific treatment by the Receiver. Any modification of the specification with respect to the treatment of a particular field may have far reaching implications concerning the proper functioning of the communication process between the Sender and the Receiver. Thus, the generalisation introduced with respect to the priority document may not be regarded as being derivable directly and unambiguously by using common general knowledge.

5. Concerning the objection by the Opponent under **Article 100(c) EPC** that amendments have been made during examination in violation of **Article 123(2) EPC**, the Opposition Division is of the provisional opinion that this is not the case. The change referred to by the Opponent from "while the receiver maintains the HFN values and discards relevant SDUs accordingly" to "while the receiver maintains a HFN value" does not appear to be objectionable. On the one hand, the aspect relating to the discarding of SDUs is not essential for the invention as claimed ("A method to reduce [...] the chance of losing a Hyper Frame Number, HFN, synchronization during data block transmission [...]", the proper discarding of SDUs being a positive side effect of the essential feature of the invention that a "data block is ignored and treated as if it has never been received" rather than a feature as such). On the other hand, "maintaining the HFN values [...] accordingly" in the description as originally filed is to be interpreted by the skilled person as "keeping track of a HFN value in the uplink or a HFN value in the downlink, hence "a HFN value" (the downlink one or the uplink one depending on whether the Receiver is the UE or the UTRAN) instead of "the HFN values", in accordance with the normal procedure, which will lead, due to the fact that the data block in question is treated as it has never been received, to keeping a HFN value unchanged, hence to the Receiver "maintain[ing] a HFN value" within the meaning of the claims. As a summary, the word "maintain" is intended in one case as 'keep track' and in the other as 'keep unchanged'. But the meaning intended in the granted claims would be directly and unambiguously derived by the skilled person from the meaning intended in the application documents as filed.

6. Concerning the objection by the Opponent under **Article 100(a) EPC** that **Claim 1** (and **Claim 6**) does not comply with the provisions of **Article 52(1) in conjunction with Article 54(2) EPC**, the Opposition Division is of the provisional opinion that the subject matter of said Claim(s) is indeed not novel over the disclosure of document **A1**.

According to **A1**, pages 56 and 60 (respectively for the UMD and the AM case), in case of a status related field - such as the length indicator value - found to be corresponding to an abnormal condition, a received PDU is firstly discarded (the whole of it, i.e. including the header portion, not just the data block) and then "treated as missing". The discarding of the PDU means that it is not available anymore - as a whole - for processing, which in turns means that nothing can be done with it anymore, not even referencing any of its header fields. This is identical with the PDU having never been received, thus being missed by the receiver, and having to be treated accordingly. The passage on page 46, Section 9.7.2 (cited by the Opponent), wherein the modalities of status transmission are described, corroborates this view if need be by showing the use, in that same context and within the same section, of the terms 'missing' and 'not received' as synonyms.

7. In case the priority is found to be invalidly claimed, in the course of the Oral Proceedings, with respect to the claims as granted, documents **A2, A2b and A3** shall indeed be considered as prior art under **Article 54(1) and (2) EPC**. **A2** discloses treating PDUs with 'wrong' length indicator values as "never received".

8. Should the Proprietor succeed in convincing the Opposition Division that the subject matter claimed is novel over the prior art, its being based or not on an inventive step would have to be discussed by establishing what objective technical problem, in view of the difference compared to the prior art, needs to be solved by the person skilled in the art.