Trial decision

Correction No. 2015-390047

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The case of trial for correction of Japanese Patent No. 5643429 has resulted in

Conclusion

The correction of claims of Japanese Patent No. 5643429 as per the corrected claims attached to the written request for trial of the present case shall be approved.

Reason

No. 1 History of the procedures

the following trial decision.

The invention according to Japanese Patent No. 5643429 was filed on May 31, 2011 as international filing date (claim of priority under the Paris Convention had been received by the European Patent Office on Aug. 2, 2010), and establishment of patent right was registered on Nov 7, 2014. The trial for correction was requested on May 19, 2015.

No. 2 Purpose of request for trial and contents of correction

The purpose of the request for trial of the case is to request to correct claims in Japanese Patent No. 5643429 as per the corrected claims attached to the written request

for trial, and the contents of the correction (hereinafter referred to as "Correction of the case") comprise the following Corrections.

To delete claims 1, 2, and 4 to 11 in claims (hereinafter referred to as "Correction A").

In claim 3 in claims, not to cite the description in claim 2 (hereinafter referred to as "Correction B").

No. 3 Judgment on the body

1. Regarding Correction A

(1) Purpose of corrections, new matter, expansion or change of scope of claims

The purpose of Correction A is to "restrict the scope of claims" by deleting claims. It is obvious that the correction has been made within the matters described in the specification, the claims, and the drawings regarding the registered patent right (hereinafter referred to as "patent specification and the like") and that the correction does not substantially expand or change the scope of claims.

Therefore, the purpose of the correction in Correction A is to restrict the scope of claims in accordance with Article 126(1) proviso 1 of the Patent Act and falls under the provisions of Articles 126(5) and 126(6) of the Patent Act.

(2) Independent requirements for patentability

Although the purpose of Correction A is to "restrict the scope of claims," the claims are deleted in Correction A, and claims to be determined to satisfy the independent requirements for patentability does not exist.

2. Regarding Correction B

 Purpose of corrections, new matter, expansion or change of scope of claims Correction B is to correct claims 2 and 3 in claims.

"[Claim 2]

A method (MET 1, MET 2) for transmitting data from a first network node (BS, RS, MS) of a radio access network (RAN) of a radio communication system (RCS) to a second network node (MS, RS, BS) of the radio access network (RAN), the method (MET1, MET2) comprising the steps of:

-transmitting (M1/6) a first negative acknowledgment (N1) from the second

network node (MS, RS, BS) when the second network node (MS, RS, BS) cannot recover first data (D1) without an error, the first data (D1) being data from a single data source of the radio access network (RAN) or for a single data sink of the radio access network (RAN),

-determining (M1/11) a combination (COMB1, COMB3, COMB4, COMB5) of the first data (D1) and at least second data (D2) by applying a superposition of the first data (D1) and the at least second data (D2), the at least second data (D2, D9) being further data from the single data source or for the single data sink,

-transmitting (M1/18) the combination (COMB1, COMB3, COMB4, COMB5) to the second network node (MS, RS, BS), wherein

the at least second data (D2) being data for which a second negative acknowledgment (N2) has been received from the second network node (MS, RS, BS),

the method (MET1, MET2) further comprising the steps of:

-recovering the at least second data (D2) at the second network node (MS, RS, BS) by subtracting an estimate of the first data (D1) of at least one previous transmission from an estimate of the combination (COMB1), and

-recovering the first data (D1) at the second network node (MS, RS, BS) by subtracting an estimate of the at least second data (D2) of at least one previous transmission from the estimate of the combination (COMB1), and

the method (MET2) further comprising the step of:

-switching between the combination (COMB1, COMB3, COMB4, COMB5) being a retransmission for first user data and at least second user data and the combination (COMB2) being the retransmission of the first data (D1) and the first transmission for the at least second data (D2).

[Claim 3]

the method (MET2) according to claim 2, wherein

the switching step depends on a fill level of a buffer at the first network node (BS, RS, MS), depending on the number of negative acknowledgments previously received and/or depending on current radio link quality."

Based on the above, claims 2 and 3 are corrected as follows.

"[Claim 3]

<u>A method (MET 1, MET 2) for transmitting data from a first network node (BS, RS, MS) of a radio access network (RAN) of a radio communication system (RCS) to a second network node (MS, RS, BS) of the radio access network (RAN), the method</u>

(MET1, MET2) comprising the steps of:

<u>-transmitting (M1/6) a first negative acknowledgment (N1) from the second</u> <u>network node (MS, RS, BS) when the second network node (MS, RS, BS) cannot</u> <u>recover first data (D1) without an error, the first data (D1) being data from a single data</u> <u>source of the radio access network (RAN) or for a single data sink of the radio access</u> <u>network (RAN).</u>

<u>-determining (M1/11) a combination (COMB1, COMB3, COMB4, COMB5) of</u> the first data (D1) and at least second data (D2) by applying a superposition of the first data (D1) and the at least second data (D2), the at least second data (D2, D9) being further data from the single data source or for the single data sink,

<u>-transmitting (M1/18) the combination (COMB1, COMB3, COMB4, COMB5)</u> to the second network node (MS, RS, BS), wherein

the at least second data (D2) being data for which a second negative acknowledgment (N2) has been received from the second network node (MS, RS, BS),

the method (MET1, MET2) further comprising the steps of:

<u>-recovering the at least second data (D2) at the second network node (MS, RS,</u> <u>BS) by subtracting an estimate of the first data (D1) of at least one previous</u> transmission from an estimate of the combination (COMB1),

<u>-recovering the first data (D1) at the second network node (MS, RS, BS) by</u> <u>subtracting an estimate of the at least second data (D2) of at least one previous</u> transmission from the estimate of the combination (COMB1), and

the method (MET2) further comprising the step of:

<u>-switching between the combination (COMB1, COMB3, COMB4, COMB5)</u> being a retransmission for first user data and at least second user data and the combination (COMB2) being the retransmission of the first data (D1) and the first transmission for the at least second data (D2), wherein

the switching step depends on a fill level of a buffer at the first network node (BS, RS, MS), depending on the number of negative acknowledgments previously received and/or depending on current radio link quality." (The underlines are applied by the demandant.)

The purpose of the above correction is to rewrite claim 3 which has been the cited claim of claim 2 to an independent claim, that is, "to change the description of claims citing the description of other claims into claims which do not cite other claims."

Therefore, it is obvious that the correction has been made within the matters

described in the patent specification and the like and does not substantially expand or change the scope of claims.

Accordingly, the purpose of the correction in Correction B is to dissolve a citation relation between claims in accordance with Article 126(1) proviso 4 of the Patent Act, and the correction falls under the provisions of Articles 126(5) and 126(6) of the Patent Act.

4. Conclusion

As described above, the purpose of Correction of the case is the matters listed in Article 126(1) proviso 1 and 4 of the Patent Act, and Correction of the case falls under Articles 126(5) and 126(6) of the Patent Act.

Therefore, the trial decision shall be made as described in the conclusion.

June 9, 2015

Chief administrative judge:	SATO, Satoshi
Administrative judge:	HIROSHIMA, Akiyoshi
Administrative judge:	MIZUNO, Yoshio