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**D E C I S I O N**  
**of 16 March 2005**

**Case Number:** T 0269/00 - 3.5.01

**Application Number:** 91116310.3

**Publication Number:** 0477891

**IPC:** H04N 5/63

**Language of the proceedings:** EN

**Title of invention:**

Power supply apparatus for television receiver set and  
television receiver set including the same

**Patentee:**

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.

**Opponent:**

Interessengemeinschaft für Rundfunkschutzrechte GmbH  
Schutzrechtsverwertung & Co. KG

**Headword:**

Power supply/MATSUSHITA

**Relevant legal provisions:**

EPC Art. 56, 113(1), 114(2), 117(1)  
EPC R. 67

**Keyword:**

"Inventive step - all requests (no)"  
"Witness offered but not summoned - substantial procedural  
violation (no)"

**Decisions cited:**

T 0142/97

**Catchword:**

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Case Number: T 0269/00 - 3.5.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.01  
of 16 March 2005

**Appellant:**  
(Opponent)

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**Respondent:**  
(Proprietor of the patent)

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**Decision under appeal:**

Decision of the Opposition Division of the  
European Patent Office posted 25 October 1999  
rejecting the opposition filed against European  
patent No. 0477891 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** S. V. Steinbrener  
**Members:** W. E. Chandler  
B. J. Schachenmann

## Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division to reject the opposition and maintain European patent No. 0 477 891 as granted.

II. Opposition had been filed against the patent as a whole under Article 100(a) EPC in conjunction with Articles 54 and 56 EPC based on:

A1: Affidavit dated 10 April 1997 signed by  
Mr Maryniok

D1/1: Colour television service manual 230-17915.002,  
edition 3-5-90, Loewe Opta GmbH

D1/2: Installation Instructions for Conversion Kit "SAT  
Stand-By Module" 291-84936.050", edition 2-7-90,  
Loewe Opta GmbH

D2: JP-A-58 121 876

D3: DE-A-30 03 425

D4: Funkschau 18/1989, pages 124-128; Gerhard Schaas:  
"Ein Gerät für viele Standards"

III. In the notice of opposition, dated 10 April 1997, the opponent alleged a prior use based on D1/1, D1/2 and Mr Maryniok's affidavit (A1), the latter containing an offer to hear Mr Kalamala as a witness. The opponent subsequently filed *inter alia* the following facts and evidence:

A2: Further affidavit dated 24 July 1998 signed by  
Mr Maryniok

D1/5: List of sales in the period from 1 to  
30 September 1990.

In the communication accompanying the summons to oral proceedings, dated 16 December 1998, the opposition division stated that it did not appear to be necessary to hear the witness as an affidavit confirming that TVs had been equipped with a satellite receiver and the standby module would be sufficient to prove this fact. In a reply, dated 13 September 1999 prior to the oral proceedings on 12 October 1999, the opponent subsequently filed *inter alia*:

A3: Affidavit dated 10 September 1999 signed by  
Mr Kalamala.

The opposition division did not admit the additional documents and affidavits for the reasons that they were late filed and did not prejudice the maintenance of the patent as granted.

The opposition division held that the grounds for opposition did not prejudice maintenance of the patent as granted.

IV. At the oral proceedings before the Board, the appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked and that the appeal fee be refunded.

The respondent (proprietor) requested that the appeal be dismissed and that the patent be maintained as granted (main request), or on the basis of claims 1 to 8 as filed at the oral proceedings.

V. Claim 1 of the main request reads as follows:

"A power supply apparatus for a television receiver set including television display means (14, 15, 18, 20) and an additional second broadcasting receiving means (24; 65), comprising:

a) a power supply circuit (26) for producing a plurality of supply voltages (17, 23, 25) which are supplied to said television display means (14, 15, 18, 20) and to said second broadcasting receiving means (24; 65), respectively;

characterized by

b) switching means (29) for switching the supply of a first supply voltage (17) out of said plurality of supply voltages (17, 23, 25) to said television display means (14, 15, 18, 20) in response to a control signal (28); and

c) control means (100) for controlling said switching means (29) by supplying said control signal (28) thereto such that said first supply voltage (17) is not supplied to said television display means (14, 15, 18, 20) when an automatic recording mode for recording a broadcasting program of said second broadcasting receiving means (24; 65) has been selected."

Claim 1 of the auxiliary request adds to claim 1 of the main request the following feature:

"wherein

said control means (100) generates said control signal (28) in response to an external command, wherein one (25c) of said plurality of supply voltages (17, 23, 25) is supplied to said control means (100), said one (25c)

of said plurality of supply voltages being supplied continuously."

VI. The appellant argued essentially as follows:

The opponent had adequately set out all the facts and evidence of the prior use case. In particular, it had been shown that TVs equipped with the Sat standby module were available in the customer service workshop in July 1990. These TVs must have been destined for sale, and experience showed that they must have been made available to the public. There were more than fifteen types of TV that accepted the standby module so that large numbers were involved. Delivery to a dealer made the TVs available to the public because a dealer had no interest in confidentiality or storing them.

Furthermore, D1/5 showed that individual Sat standby modules had been sold to dealers in September 1990, who must have fitted them in response to user requests and passed them on to customers. The fitting of the Sat standby module was easy and took only a few minutes, so that the dealer could have easily performed it. The list of sales to dealers must be acceptable evidence because even the German tax office ("Finanzamt") accepted such proof. The units must have been available at or shortly before the "RE-DAT", meaning "Rechnung" (invoice) date, on D1/5 because it was not usual to have an invoice before delivery.

Since the opposition division did not find the documentary evidence conclusive, it should have heard the witness, Mr Kalamala. This refusal to consider an adequately substantiated offer of evidence filed in due

time infringed the opponent's fundamental right to the free choice of evidence and the right to be heard (Articles 117(1) and 113(1) EPC) and constituted a substantial procedural violation as held in T 142/97 (points 2.3 and 2.4).

D2 or D4 was the closest prior art since they both disclosed a TV with an integrated satellite receiver. D4 disclosed, in the Figure on page 125, a TV with a satellite tuner that could be connected to a video cassette recorder (VCR) using a SCART connector (photograph on page 127). It was usual to record the output of the satellite. There would be a need to record the signals with a minimum use of energy. Thus it would have been obvious to consider switching off unneeded components, namely the display. D2 also gave a hint to do this by turning off the power supply to the main tuner when a satellite tuner was being used. D3 also gave a hint when it disclosed (page 5, lines 21 to 25) controlling the power to various components in the system of Figure 1.

The auxiliary request further differed from the prior art only by features that would inevitably be present in a working system. Firstly, there would be an external command to cause the generation of the control signal. Secondly, the control means would be supplied continuously with voltage or it could not respond to the command.

It was standard practice to use a single power supply unit (PSU) with a plurality of supply voltage outputs.

VII. The respondent argued essentially as follows:

At the end of the opposition period only D1/1, D1/2 and A1 had been filed.

D1/2 was dated 2-7-90 and A1 stated that the equipped TVs were available at the beginning of July 1990. However, it was not clear whether the TVs equipped with the Sat standby module were available at the beginning or the end of July. The time difference of only two months before the priority date was critical. It was plausible that the TVs were not delivered immediately. The dates on D1/5 did not prove actual delivery of the standby modules on that date and were too close to the priority date to assume that delivery had taken place.

When recording the output of the satellite, the TV display would normally have been on. The claimed automatic recording mode enabled recording of a program from the second broadcasting receiving means (e.g. satellite receiver) without having to power the display.

In D2, the purpose of switching off one tuner when the other was in use was to prevent interference. Thus D2 concerned a different problem and solution and would not have led to the invention.

Even if the skilled person had realised that the display was not needed, he would not have done anything about it. In earlier times displays were not switched off. This was a further step for which there was no suggestion in the prior art.



The effect of the additional feature of the auxiliary request was that the control means was always powered on so that it could always control the TV.

### **Reasons for the Decision**

1. The appeal complies with the requirements referred to in Rule 65(1) EPC and is, therefore, admissible.
2. The patent (see column 3, lines 37 to 46) essentially concerns the problem of saving power in a television receiver when recording programs from a second receiver (e.g. satellite). The problem is solved by switching off the power supply to the television display means when the second receiver is in an automatic recording mode (to allow recording of its output).

#### *Inventive step (main request)*

3. The Board judges that D4 is the closest prior art because it discloses, in the Figure on page 125, a conventional TV receiver with an integrated satellite receiver according to the opening paragraph of claim 1. The Board judges that it is implicit that such a receiver contains a power supply circuit for producing a plurality of supply voltages for the television display means and the satellite receiver according to feature a) of the claim.
4. Claim 1 therefore differs from D4 by the switching means for switching off the supply to the display means in response to a control signal provided by a control means when an automatic recording mode for recording a

program from the second broadcasting (satellite) receiving means has been selected.

5. The Board judges that these features, i.e. essentially turning off the television display when recording the output from the satellite receiver, solve the technical problem of saving power.
  
6. D4 discloses at page 125, third paragraph and in the Figure, the possibility of connecting a VCR to the television receiver (via the S-VHS connection), and the photograph on page 127 shows a SCART connector suitable for this purpose. The Board agrees with the appellant that it is obvious to consider, if not current practice at the time, recording the output from the satellite receiver of D4 for later viewing. Furthermore, the Board agrees that when recording a program for later viewing, i.e. in the absence of the viewer, a user would immediately realise that the television display is not required, but would be wasting energy and could even be dangerous. Thus the Board judges that it is obvious to consider switching off the display when recording for later viewing. In fact, the Board considers the general idea of switching off unneeded components is a basic matter of common sense. Similar considerations are apparent in D2, where the power supply to the main tuner is turned off when a satellite tuner is being used, albeit also for the explicitly stated purpose of avoiding interference, and D3 at page 5, lines 21 to 25, where the power to various components in the system of Figure 1 is controlled. Finally, the Board judges that implementing this function using switching means responding to control

means, as claimed, is a matter of routine design procedure.

7. Claim 1 of the main request accordingly does not involve an inventive step (Article 56 EPC).

*Inventive step (auxiliary request)*

8. Claim 1 of the auxiliary request adds the further features that the control means generates the control signal in response to an external command, and that one of the plurality of supply voltages is continuously supplied to the control means.

9. Firstly, the Board agrees with the appellant that it is almost mandatory to use an external command to cause the generation of the control signal, all other imaginable sources for the command being highly unlikely. Secondly, the Board also agrees with the appellant that it is standard practice to use a single power supply with a plurality of supply voltage outputs to power various parts of a TV (see for example D1/1, Power Section 6). Furthermore, the Board judges that it is obvious that the control means must be supplied continuously with voltage or it could not respond to other commands, such as stopping the automatic recording mode. The Board therefore judges that it is an obvious possibility to use a power supply output that is not switched off with the display, i.e. to supply it continuously, as claimed.

10. Claim 1 of the auxiliary request accordingly does not involve an inventive step (Article 56 EPC).

11. There being no other requests, it follows that the patent must be revoked.

*Reimbursement of appeal fee*

12. Since the Board finds that the requests do not involve an inventive step with respect to the available written prior art, it is not necessary to go into the issue of prior use in detail. However, some aspects of this objection are relevant to the appellant's request for reimbursement of the appeal fee. This request is based on an alleged procedural violation by the opposition division caused by the fact that they did not hear the witness, Mr Kalamala. The appellant alleges that this was an incorrect use of the opposition division's discretion, which, as in the similar situation in T 142/97 - Apparatus for separating disc-shaped objects/STÖCKLI (OJ EPO 2000, 358), infringed the opponent's fundamental right to the free choice of evidence and the right to be heard (Articles 117(1) and 113(1) EPC).
13. In case T 142/97, the Board recognised that the opposition division had, under certain circumstances, a discretion when admitting evidence offered (see point 2.2). However, the Board judged that the opposition division had violated the opponent's right to be heard under Article 113(1) EPC by not hearing the witness offered in connection with a prior use that was adequately substantiated in the notice of opposition (see points 2.3 and 2.4). In particular, the witness was offered to testify about the alleged development, manufacture and sale of specific prior-use machines. Invoices were also produced to support the date and

circumstances of the alleged prior use (see point 2.3.2).

14. The Board judges that the present case differs because the ground of prior use was not adequately substantiated during the opposition period, but was completed piecemeal during the opposition proceedings. Hence, the present case relates to the question of whether the opposition division correctly exercised its discretion under Article 114(2) EPC in not admitting late-filed evidence. During the opposition period, the present opponent filed only the affidavit A1 offering Mr Kalamala to confirm the fact that the Loewe "Kundendienstwerkstatt" (customer service workshop) had equipped a number of TVs with the Sat standby module in July 1990. This fact alone cannot as such be considered sufficient substantiation of a public prior use. The opposition division subsequently stated in the summons to oral proceedings that an affidavit would be enough to prove this fact. The Board cannot see any procedural error in this approach.
  
15. After nine months of silence and less than one month before the oral proceedings, the opponent filed the affidavit from Mr Kalamala, A3. This corroborated not only the fact mentioned above, but also attempted to corroborate other facts alleged *after* the opposition period, namely sales of the standby modules themselves. It even introduced further new facts, namely that TVs equipped with the standby module were delivered to factory staff and dealers, and that TVs were equipped in the factory and then sent straightaway to dealers. Even then, none of the additional aspects of prior use contained full details of a single example of an

- equipped TV or standby module having been made available to the public. In particular, the alleged sales of the standby modules shown in D1/5 occurred in the same month as the priority date so that more information about the circumstances of the sales would have been needed.
16. Finally, the Board notes that even during the appeal oral proceedings the appellant was still speculating how the equipped TVs or modules could have been made available to the public via the chain of manufacturer, dealers and customers, and has not stated a decisive set of facts that Mr Kalamala could corroborate in order to prove the prior use.
17. Weighing up the overall circumstances of the present case, in particular the vague and piecemeal approach to the prior use case, and the very late stage that these facts were offered, the Board judges that the opposition division made no serious procedural error that could justify the reimbursement of the appeal fee under Rule 67 EPC in exercising its discretion not to admit these facts and not to hear the witness. The appellant's request for reimbursement of the appeal fee is accordingly refused.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

M. Kiehl

S. Steinbrener