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D E C I S I O N
of 16 July 2003

Case Number: T 0995/00 - 3.5.1

Application Number: 90906384.4

Publication Number: 0470124

IPC: H04N 7/16

Language of the proceedings: EN

Title of invention:

Arrangement in a television communication system

Patentee:

COMPLAN NETWORK A/S

Opponents:

Ciscom AG

Grundig AG

Interessengemeinschaft für Rundfunkschutzrechte GmbH

Schutzrechtsverwertung & Co. KG

Headword:

Television communication system/COMPLAN NETWORK

Relevant legal provisions:

EPC Art. 123(2) and (3)

EPC R. 65(1)

Keyword:

"Admissibility of appeal (yes)"

"Extension of protection (yes)"

"Added subject-matter (yes)"

Decisions cited:

T 0162/97

Catchword:

-



Case Number: T 0995/00 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 16 July 2003

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted 1 August 2000
revoking European patent No. 0470124 pursuant
to Article 102(1) EPC.**

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. Randes
M. J. Vogel
A. S. Clelland
E. Lachacinski

Summary of Facts and Submissions

I. This is an appeal against the decision of the Opposition Division to revoke the present European patent No. 0 470 124 because the subject-matter of claim 1 as granted (main request) as well as that of the auxiliary request did not involve an inventive step in view of the disclosure of document

D2: GB-A-2 118 750

and the skilled person's common general knowledge.

Claim 1 as granted (main request before the Opposition Division) reads as follows:

"A television communication system, employing a plurality of identifiable user apparatus (TV1, TV2, TV1A, TVRA etc), each having its own control means, which are connected to receive standard high frequency television signals, which may include teletext information, via selectable video channels (3D);

including an arrangement for selectively presenting further audio and/or video information to the user apparatus and for controlling the user apparatus, either individually or in a group, with the aid of digital signals generated and transmitted independently of the standard high frequency television signals and the selected video channel and capable of one-way or two-way communication;

said arrangement comprising a central computer and control unit (21, 25) connected at least to transmit the digital signals and thereby to control the selected user apparatus and dedicated module means (2) included in each said user apparatus between an input (3A) of said user apparatus and the video colour circuits (11, 12, 13, 14) of said user apparatus and connected to the control means thereof to effect control in response to the digital signals,

said module means (2) serving to receive and decode the digital signals and comprising a text and graphics processor (2A) which co-operates with a unit having video interface (2C) for converting said digital signals to locally generated analogue video signals which are then presented to the user as the further audio and/or video information, the latter being in the form of text or high resolution pictures and graphics displayed on a screen of said user apparatus independently of video images, which may include teletext, derived from the television signals in the sense that the further video information can be superimposed on the video images on the screen derived from the television signals."

II. The patentee appealed, requesting in the statement of grounds of appeal that the patent be maintained on the basis of claim 1 which reads as follows (the features in bold preceded by roman numerals indicate, according to the appellant/patentee, features which are new or to some extent different from the features of granted claim 1):

"A television communication system, employing a plurality of identifiable user apparatus (TV1, TV2, TV1A, TVRA etc.),

(I) each said user apparatus being in the form of a standard television apparatus (1)

(II) equipped with an input (3A) for (III) receiving standard high frequency television signals, which may include teletext information (IV) directly derived from the blanking signals of the standard television signals,

(V) a channel selector (5) for selecting a video channel which communicates with a micro-controller unit (6) capable of receiving command signals from a front panel (7) of the apparatus or from a remote control unit (8) associated with the apparatus,

(VI) an audio circuit (14) for processing audio signals derived from the television signals for reproduction by the apparatus under control of the micro-micro controller unit,

(VII) circuits (11, 12, 13) for processing video signals derived from the television signals controlled by the micro-controller unit (6) via an I2c bus for generating an image on a display screen (16) of the apparatus corresponding to the television signals and

(VIII) dedicated module means (2) integrated into each user apparatus between the input (3A) and the processing circuits (11) and connected to the I2c control bus to effect control of the user apparatus to

the same extent as but independent of the micro-controller (6) and the command signals;

the system further including:

an arrangement for selectively presenting further audio and/or video information to the user (IXa) **apparatuses** and for controlling the user (IXb) **apparatuses** either individually or in a group, with the aid of digital signals generated and transmitted independently of the standard high frequency television signals and the selected video channel and capable of one-way or two-way communication (X) **via the inputs of the user apparatus;**

said arrangement comprising a central computer and control unit (21, 25) connected at least to transmit the digital signals and thereby to control the selected user apparatus (XI) **through the** dedicated module means (2) in response to the digital signals

(XII) wherein said module means (2) of each apparatus serves to receive and decode the digital signals and the module means comprises a text and graphics processor (2A) which co-operates with a unit having a video interface (2C) for converting said digital signals to locally generated analogue signals which operate the processing circuits and are then presented to the user as the further audio and/or video information,

the (XIII) latter being in the form of text or high resolution pictures and graphics displayed on the display screen of said user apparatus independently of video images, which may include teletext,

derived from the television signals in the sense that the further video information can be superimposed on the video images on the screen derived from the television signals".

The appellants in the grounds of appeal (Annex B) indicated which parts of the original application they considered to support the new and amended features of the claim. They also expressed the opinion that the subject-matter of the claim met the requirements of Article 123(2) and (3) EPC. Moreover they submitted that the subject-matter of the new claim was novel and not obvious in the light of the teaching of D2.

- III. The respondents, O1 and O3, in their replies to the grounds of appeal contested the argumentation of the appellants on all points and O3 moreover argued that the appeal was not admissible.
- IV. In an annex to a summons to oral proceedings the Board expressed the provisional opinion that the appeal was admissible. However, having regard to the wording of claim 1 of the appellants' request, the Board had doubts as to whether the requirements of Articles 123(2) and (3) EPC were met. In particular, it was pointed out that feature VIII, as identified in the amended claim, did not appear to be supported by the original application documents and that this feature also appeared to be in conflict with Article 123(3) EPC.

Moreover the Board expressed the opinion that the decision of the Opposition Division was convincing and that, although many new features had been introduced into the new claim, this claim largely corresponded to the refused claim according to the auxiliary request before the Opposition Division and that the subject-matter of the claim appeared to be obvious to the skilled person.

- V. In a letter received before the oral proceedings the appellants stated that they did not intend to be represented at the oral proceedings appointed for 16 July 2003.
- VI. At the oral proceedings, which took place in the absence of the appellants, the respondents argued along the lines set out in their replies to the grounds of appeal. O3 argued in respect of admissibility that, since the appellants had filed a new amended main claim as a main request together with the grounds of appeal and since the appellants in their argumentation merely defended the novelty and inventive step of the subject-matter of this new claim, they did not make clear why the appealed decision, which concerned a different claim, was wrong.
- VII. The parties' final requests are as follows:
- The appellants (patentees) requested in writing that the decision under appeal be set aside and that the patent be maintained on the basis of claim 1, submitted with the statement of grounds of appeal dated 29 November 2000.

The respondents 01 requested that the appeal be dismissed.

The respondents 03 requested that the appeal be rejected as inadmissible and, as an auxiliary request, that the appeal be dismissed.

VIII. At the close of the oral proceedings the Chairman announced the Board's decision.

Reasons for the Decision

1. Regarding the admissibility of the appeal, the respondents 03 argued that an appeal, in order to be admissible had to contain arguments why the impugned decision was wrong. The mere filing of amended claims would not meet this requirement. On the contrary it indicated that the decision was justified.

The Board is of the opinion that the appellants, of course, were adversely affected, since the Opposition Division refused both of the appellants' requests. Moreover the appellant's argumentation, in fact, deals with one of the principal points of the decision concerning the inventive step issue (dedicated module means integrated into the television receivers instead of having a set top box - see the appealed decision, points 41, 42 and 53) and tries to show that the Opposition Division was wrong in its assessment of the prior art. The amendments and restrictions made in the claim have apparently been made to make clear that the dedicated module means is indeed integrated in a standard television receiver and, according to the

appellants, has a different impact on the receiving functions of the receiver from a set top box connected to a receiver. Hence, the rewording of the claim must also be seen as a reaction to the findings of the appealed decision.

In accordance with established jurisprudence (see, for example, decision T 162/97, not published in OJ EPO), the Board is therefore of the opinion that the requirements mentioned in Rule 65(1) EPC, and in particular Rule 64(b) EPC, are satisfied and that the appeal is admissible.

2. Having regard to the numerous amendments made in claim 1 in relation to granted claim 1, it is clear that such extensive rewording bears a great risk of causing problems under Article 123(2) and/or (3) EPC, in particular, if not only numerous features have been added to the claim but also the old features have been put in quite different positions to those in the claim as granted, which might change their relationship.
 - 2.1 As a result of new feature VIII the Board finds, that claim 1 does not meet the requirements of Article 123(3) EPC.

The "dedicated module means (2)" according to granted claim 1 is defined as being positioned "between an input (3A) of said user apparatus and the video colour circuits (11, 12, 13 14)". According to the amended claim however, the module means is said to be "between the input (3A) and the processing circuits (11)". It is true that in granted claim 1 after the words "the video colour circuits" the reference numerals 11, 12, 13 and

14 are indicated in parentheses. According to the description (see Figure 1 and associated text) however, the single numeral 11 identifies the video colour decoder. Numerals 12, 13 and 14 relate to a unit for vertical circuits, a unit for horizontal circuits and to a unit for audio circuits, respectively. Thus it might be argued that the units 11 to 14 together could be considered as the "processing circuits" mentioned in the amended claim. However such a designation representing the four different units cannot be found in the original documents (see, in particular, original claim 5) and moreover reference signs within parentheses in a claim are, according to Rule 29(7) EPC, not part of the claim, but are introduced into the claim "if the intelligibility of the claim can be increased" (in the present case the intelligibility has rather been decreased by the introduction of the signs).

The Board also notes that, according to Figure 1 of the patent specification (and also the application), the "dedicated module means (2)" is positioned between the input 3A and the "colour decoder (or decoding) unit 11" (see patent specification, column 6, lines 8 and 15). The dedicated module 2 is thus not connected to the circuit units 12, 13 and 14 and, moreover, the colour decoding unit 11 and units 12 to 14 have not been represented as sub-units of a superior processing circuits unit. Therefore also the teaching of Figure 1 cannot support an interpretation of granted claim in the way that the term "colour circuits" could be replaced by the more general expression "processing circuits" (representing all the units 11 to 14). Figure 1 simply shows that the dedicated module 2 is

only connected to the colour decoder unit 11, that is only to the unit containing the "video colour circuits". Thus, leaving aside any problems under Article 123(2) EPC in this respect, amended claim 1 does not meet the requirement of Article 123(3) EPC in that its contents has been generalised with respect to claim 1 as granted, thus extending the protection conferred.

- 2.2 The Board finds that feature VIII in amended claim 1 is also in conflict with Article 123(2) EPC in that it adds subject-matter to the claim which extends beyond the content of the application as filed.

The Board does not agree that the original application documents disclose that the dedicated module means (2) "effect control of the user apparatus to the same extent as **but independant of the micro-controller (6)** and the command signals", as is stated in feature VIII. On the contrary, having regard to the original application documents (see, in particular, the original text in WO-A- 90/13206, the paragraph bridging pages 10 and 11), it appears that the dedicated module means 2 is interconnected with the micro controller 6 and therefore cannot control the user apparatus independently of the micro controller.

In original claim 11 it is said that when the module means 2 is connected to the "micro controller bus (6, I2C)", it is allowed "to control the electronic circuits and functions of the apparatus in a manner corresponding to the standard remote control unit(s) of said apparatus". In other words, module 2 operates in a similar way to a remote control unit, which controls

the electronic circuits of the apparatus by way of a sender/receiver-unit 8 connected to the micro controller 6. Thus apparently also the dedicated module 2 uses the micro controller and cannot operate independently of it.

With the statement of grounds of appeal, the appellants have submitted an annex B intended to show the "support for the amendments introduced into the main claim for the purposes of the appeal". In this context, point 8 of the annex deals with feature VIII and refers to various passages of the patent specification and the originally published PCT application. However, none of these passages relates to independent control of the user apparatus by the dedicated module 2, nor can the Board find any hint in the original description that the dedicated module means 2 could control the apparatus independently of the micro-controller 6.

3. Hence the Board concludes that claim 1 of the appellants' single request does not meet the requirements of the EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

S. V. Steinbrener