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D E C I S I O N
of 11 February 2003

Case Number: T 0055/01 - 3.5.1

Application Number: 92115521.4

Publication Number: 0536553

IPC: H04N 5/44

Language of the proceedings: EN

Title of invention:
Television receivers

Patentee:
SONY CORPORATION

Opponent:
Intressengemeinschaft für Rundfunkschutzrechte GmbH Schutzrechtsverwertung & Co. KG

Headword:
Satellite broadcast recording/SONY

Relevant legal provisions:
EPC Art. 52(1), 56

Keyword:
"Inventive step (no)"
"Public availability of mass-produced consumer goods (TV-receivers)"

Decisions cited:
T 0472/92, T 0241/99

Catchword:

Televisions are mass-produced consumer products which are rapidly distributed to the market without any obligation of confidentiality. According to general experience, it seems highly implausible that such goods, whilst being mass-produced, accumulate at some hidden location. Under these circumstances no further evidence is necessary to prove that the televisions were actually sold to specified customers and that the handbook accompanying the televisions was made available to the public in a period of about four months between their established production date and the priority date of the patent in suit, thereby taking into account that events on the mass market such as the appearance of new television products are readily accessible to everybody, in particular to competitors, who will normally observe the market carefully. Hence, the standard of proof of balance of probabilities applies in cases such as this (as distinguished from T 472/92) (see point 4.1 of the reasons).

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0055/01 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 11 February 2003

Appellant: (Opponent)
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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 30 November 2000 concerning maintenance of European patent No. 0536553 in amended form.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. Randes
P. Mühlens

Summary of Facts and Submissions

I. This is an appeal against the interlocutory decision by the Opposition Division finding that the European Patent 0 536 553 in amended form met the requirements of the Convention.

II. The opposition was on the grounds of lack of novelty and lack of inventive step in view of *inter alia* the following documents:

D1: DE-A-30 03 425

D2: DE-A-38 15 560

D4: The "SAT-Zusatzbedienungsanleitung" accompanying televisions of the types "Classic B70 SAT 7985", "Panama 63 SAT 7982" and "Hawaii 70 SAT 7986" sold by the Metz-Werke GmbH & Co KG, Fürth (DE), bearing a printing reference ("Druckvermerk") on the last page "B 690 47 1038/19104" and a related sworn statement by Mr Frisch, the Development Manager of the same company, received by fax on 14 October 2000.

D5: Documents relating to the "SAT Stand-by module" fitted to televisions manufactured by Loewe Opta GmbH using the C9001 chassis.

III. In its decision the Opposition Division held that D5 formed the closest prior art. D4 was considered not to be prior art, since its alleged printing date was too close to the priority date of the patent and the statement by Mr Frisch had been insufficiently specific.

IV. The Opponent appealed, requesting that the decision be set aside and that the patent be revoked. The Appellant argued that D4 did belong to the prior art and that the subject-matter of claim 1 lacked inventive step in view of either D4 or D5, combined with either general technical knowledge or the teaching of D1 or D2.

V. The Respondent (Patentee) requested that the appeal be dismissed. The Respondent disputed whether D4 or D5 formed prior art and argued that, even if they did, they did not render the claimed subject-matter obvious.

VI. Since both parties had made auxiliary requests for oral proceedings, the parties were summoned to oral proceedings. In an annex to the summons the Board indicated that it was inclined to regard D4 as being prior art.

VII. Oral proceedings were held before the Board on 11 February 2003 during which the Appellant reiterated the request that the decision under appeal be set aside and that the patent be revoked.

As a main request, the Respondent reiterated the request that the appeal be dismissed. The Respondent also made an auxiliary request that the patent be maintained on the basis of claim 1 of the auxiliary request filed in the oral proceedings.

VIII. Claim 1 according to the main request, which is the same as claim 1 considered allowable by the Opposition Division, reads as follows (during the oral proceedings before the Board the possible insertion of an

expression in claim 1 at the point marked "**[insert]**" was discussed):

"1. A television device, comprising
- a first circuit component, a second circuit component and a common power supply means (21) for independently supplying electrical power to said first and second circuit components,
- the first circuit component being a television receiver section (10) for receiving a conventional television broadcast signal,
- the second circuit component being a satellite broadcast receiver section (22) for receiving a television signal from a satellite and converting said received television signal to a converted television signal,
- an output terminal (5),
- a switching means (3) for selectively supplying one of said conventional and converted television signals to said output terminal (5) and
- a control means (16) for controlling said switch means (3),
wherein said control means (16) further controls said power supply means (21) in case that the television receiver section (10) is switched off **[insert]** and not supplied with said electrical power in such a manner
- that said electrical power is supplied to said satellite broadcast receiver section (22), when said satellite broadcast receiver section (22) is activated to supply said converted television signal to said output terminal (5) through said switching means (3), and
- that said electrical power is not supplied to said satellite broadcast receiver section (22), when said

satellite broadcast receiver section (22) is not activated to supply said converted television signal to said output terminal (5) through said switching means (3)."

IX. Claim 1 according to the auxiliary request reads as follows:

"1. A television device, comprising
- a first circuit component, a second circuit component and a common power supply means (21) for independently supplying electrical power to said first and second circuit components,
- the first circuit component being a television receiver section (10) for receiving a conventional television broadcast signal,
- the second circuit component being a satellite broadcast receiver section (22) for receiving a television signal from a satellite and converting said received television signal to a converted television signal,
- an output terminal (5),
- a switching means (3) for selectively supplying one of said conventional and converted television signals to said output terminal (5) and
- a control means (16) for controlling said switch means (3),
wherein if both the satellite broadcast receiver section (22) is activated to supply said converted television signal to said output terminal (5) through said switching means (3) and a power main switch (15) of the television device is switched off,
- said control means (16) further controls said power supply means (21) such that said electrical power is

supplied to said satellite broadcast receiver section (22),
whereas said electrical power is not supplied to said satellite broadcast receiver section (22), when said satellite broadcast receiver section (22) is not activated to supply said converted television signal to said output terminal (5) through said switching means (3)."

X. The Appellant's arguments at the oral proceedings may be summarised as follows:

The "SAT-Zusatzbedienungsanleitung" D4 had been printed in April 1991, more than 4 months before the priority date of the patent in suit. It was clear from its content that it was directed to consumers and was not, for instance, an internal company document. It was moreover inconceivable that the televisions shipped with the "SAT-Zusatzbedienungsanleitung" would not have been sold within the next 4 months, a view confirmed by Mr Frisch in his sworn statement in which he stated that a "SAT-Zusatzbedienungsanleitung" printed in April 1991, according to normal company practice, accompanied televisions shipped from May 1991 at the latest. The Appellant emphasized that no evidence had been produced that these televisions had not been available for sale before the priority date. D4 consequently belonged to the prior art.

The Appellant conceded that the claimed subject-matter was novel over D4, since D4 did not disclose the satellite receiver being turned off when its output was not switched through to the television's "EURO" output connector. It was however usual to turn off unused

circuitry to conserve energy. Hence the claimed subject-matter lacked inventive step in view of D4, as well as D5 (cf. points III and IV above), combined with general technical knowledge or with the teaching of either D1 or D2.

XI. The Respondent's arguments at the oral proceedings may be summarised as follows:

The Respondent admitted that it was difficult, many years after the event, to prove that a sale had taken place, but insisted that only a clear and complete chain of proof of a sale was sufficient. After all, it was possible that manufactured goods were never, or only after considerable delay, sold to customers, for instance due to the introduction of newer models or due to product recalls. Moreover Mr Frisch in his sworn statement only referred to usual practice at his company, rather than explaining what had happened in the case of the televisions referred to in the "SAT-Zusatzbedienungsanleitung". Since the Appellant had failed to provide a clear and complete chain of proof for the public availability of D4, it did not form prior art.

According to the Respondent, the invention concerned the situation when a television in the standby mode was switched off using the mechanical power switch. Under these circumstances the standby mode was artificially preserved if the television's satellite receiver was being used to make a recording. Hence, whilst the televisions described in D4 had to be in standby mode to record a satellite programme, the television according to the invention could be switched off all

together. The Respondent argued that the description (column 4, line 43 to 50) contained an error in stating that figure 1 did not show the television's mechanical switch. The Respondent offered to amend claim 1 according to the main request by inserting the expression "by turning off the main power switch (15)" at the point marked "**[insert]**" above.

XII. At the end of the oral proceedings the Board announced its decision.

Reasons for the Decision

1. *The admissibility of the appeal*

The appeal meets the requirements set out in Rule 65(1) EPC and is therefore admissible.

2. *The allowability of the amendments*

Claim 1 of the main request is the same as that decided on in the contested decision. The proposed amendment inserts the expression "by turning off the main power switch (15)" at the location indicated above and is derived from the description between column 6, line 56 and column 7, line 1 of the published patent.

Claim 1 according to the auxiliary request has been amended with respect to that of the main request to express the features of the control means in a different way. In the Board's view the amendments are merely editorial in nature and do not change the subject-matter of the claim.

The Board is consequently satisfied that claim 1 according to the main request (also with the proposed amendment) and the auxiliary request satisfies Article 123(2) and (3) EPC.

3. *The interpretation of the term "power main switch (15)"*

The Respondent has argued that the expression "power main switch (15)" refers to a switch which disconnects all parts of the television from the mains power supply and that the statement in the description that figure 1 does not show the "fundamental mechanical switch" is an error.

The Board is not convinced by these arguments. The description (see column 4, lines 43 to 45) states in connection with figure 1 that the television is normally in a stand-by state when the "fundamental mechanical switch (not shown) is in the on-state". This is consistent with figure 1, which does not show a switch between mains plug 24 and other parts of the television. The description continues, "The power circuit is supplied with control signals by the microcomputer 16 (which is powered through a transformer 25) when a switch (main power switch) 15 is on, so that it supplies source voltages to the respective portions of the television receiver." This statement is understood to mean that when the fundamental mechanical switch is closed the microcomputer 16 is provided with power at all times by transformer 25. Depending on the state of the main power switch 15, the microcomputer 16 controls the power supply circuit 21 to provide power to other parts

of the television. Later on in the description (column 6, line 56 to column 7, line 1) it is stated that "while the video signal and audio signal from the BS tuner 12 are being recorded on the outside apparatus such as VTR 23, even though the main power switch 15 is turned off, only the satellite broadcast receiving section 22 is powered from the power circuit 21 under the control of the microcomputer 16." Hence in the standby state when recording a satellite transmission power is not only supplied to microcomputer 16, but also to the satellite broadcast receiving section 22, as shown in the flow chart of figure 2.

Hence the "main power switch" 15 provides a control signal to the microcomputer 16 causing the television to switch between the "stand-by" and the "fully on" states. The Board is unable to find any evidence in the patent of an error as to the function of the "main power switch", the patent being entirely consistent in this respect.

4. *The prior art*

The Appellant has relied primarily on D4 and D5 as alleged prior art.

Leaving aside the issue of the public availability of D4 and D5 for an instant, the Board notes that D5 contains circuit diagrams of a television chassis and various plug-in boards, but says little about how the television functions, particularly in the "SAT stand-by" mode. In contrast, D4 presents the television from the user's point of view in describing what its "SAT-Stand by-function" (page 10) entails. The Board

consequently regards the subject-matter of D4 as more relevant to that of the claims. Consequently the Board refrains from dealing further with D5, since it is not necessary for a decision in the present case.

4.1 The public availability of D4

D4 is the user's handbook for the satellite functions of a domestic television having a satellite receiver. D4 mentions on page 6 (right column, 3rd line from bottom) and on page 26 (line 2) that it reflects the situation in March 1991. The last side bears a printing reference ("Druckvermerk") "B 690 47 1038/19104". Mr Frisch has explained in his sworn statement that the last four digits of the printing reference – "9104" - indicate its printing date, in this case April 1991. According to Mr Frisch's statement, following usual company practice such a handbook accompanied all the televisions shipped from this date, in other words from May 1991 at the latest.

The Respondent has argued that only a complete chain of proof will suffice to establish that D4 forms prior art. The Board agrees that the evidence adduced by the Appellant does not form a complete chain of proof of a sale. For example, no evidence has been produced concerning the identity of a purchaser or the circumstances of the sale. However the Board is not convinced that it would be reasonable to expect such a complete chain of proof in the present circumstances, which concern a mass-produced consumer product. Moreover, the Board doubts whether it is necessary to prove that a sale occurred at all, since merely distributing the mass-product to the market, for

example by delivering it to the wholesale trade or by offering it for sale in a shop would make it publicly available.

It is true that, in cases where only one party has access to information about an alleged public prior use, the case law has tended towards expecting that the public prior use be proved beyond any reasonable doubt ("up to the hilt"), answering the typical questions "What?", "When?", "Where?", "How?" and "To whom?", since the other party was reduced to merely pointing out inconsistencies or gaps in the chain of evidence; see T 472/92, reasons, point 3.1 (OJ EPO 1998, page 161). The case law has however taken into account that cases of mass-produced consumer goods which are widely advertised and offered for sale to customers who often remain anonymous may require different treatment; see T 241/99, reasons, point 4.2 (not published in OJ EPO). Indeed, to demand a complete chain of proof in such cases would make it unreasonably complicated for a party to successfully rely on a sale or an offer for sale to prove public availability.

Turning to the facts of the present case, the Board has no reason to doubt the explanation given by Mr Frisch of the meaning of the printing reference indicated in D4. The alleged printing date of April 1991 is also consistent with the statement in D4 that the text reflects the situation in March 1991. The Board concludes that D4 was printed in April 1991.

The statement by Mr Frisch is also relied upon by the Appellant to prove that copies of D4 were being shipped with televisions by May 1991. No evidence has been

produced that this was not the case and the Board sees no reason to doubt this fact. Indeed, according to the affidavit of Mr Frisch the corresponding television models had been on the market since January 1991 at the latest together with a provisional copy of the manual which was to be replaced by the printed version D4, so that it must be assumed that this version was used in the ongoing production as soon as it became available.

The question then arises of whether the handbook D4 was made available to the public before the priority date, for instance by selling the television, or even by merely offering it for sale. Here the Appellant has relied essentially on the argument that it is usual in commerce to move mass-products rapidly from manufacturer to point of sale so that such a television must have been sold before the priority date. The Board takes the view that televisions are indeed mass-produced consumer products which are rapidly distributed to the market without any obligation of confidentiality. According to general experience, it seems highly implausible that such goods, whilst being mass-produced, accumulate at some hidden location. Under these circumstances the Board accepts the appellant's conclusion that televisions must have been sold in the period between May 1991 and the priority date in September 1991 and that no further evidence is necessary in this respect. Moreover, it appears in the present case that merely distributing the television to the market would have made the service manual D4 available to the public. Hence there is no need to go into the question of whether a sale to specified customers actually occurred. The Board hastens however to underline that it considers the standard of proof

adopted in the present case to be appropriate because of the high probability of public availability which almost amounts to certainty, and because of the fact that events on the mass market such as the appearance of new television products are readily accessible to everybody, in particular to competitors, who will normally observe the market carefully. Hence, in the Board's view the standard of proof of balance of probabilities applies in cases such as this (as distinguished from T 472/92).

The Respondent has raised the theoretical possibilities of product recalls or product updates which might have somehow prevented the televisions shipped from May 1991 from being sold before the priority date in September 1991, but has provided no concrete evidence to confirm these suspicions. On the balance of probabilities the Board concludes that the televisions were distributed to the market, offered for sale and indeed sold before the priority date. Hence D4 was made publicly available before the priority date and thus forms prior art.

4.2 The disclosure of D4

According to the section entitled "Euro-AV-Auswahl" on page 9, the television has an output terminal, termed the "EURO" socket, and switching means which can connect the output terminal to either the output of the terrestrial television receiver, denoted "TV", or to that of the satellite television receiver, denoted "SAT". As the section entitled "Sat-Stand by-Funktion" explains, the television can be switched into a satellite recording mode in which satellite programs can be recorded from the satellite receiver although

the television is in the standby state, implying in the Board's view that power is supplied to the satellite receiver, but not to the display circuits of the television. In order to switch the television into this mode the switching means must be set to connect the output of the satellite receiver to the television's EURO socket.

4.3 D1 and D2

D1 (page 10, lines 28 to 32) concerns turning off the power to those parts of a hifi system which are no longer needed when a record- or cassette-player turns off. D2 concerns (column 3, lines 32 to 39) an audio/video system in which a signal source is turned off when the recording device it is feeding runs out of recording medium.

5. *Novelty*

5.1 Main request

The subject-matter of claim 1 differs from the disclosure of D4 in that electrical power is not supplied to the satellite broadcast receiver section when it is not activated to supply the converted television signal to the output terminal through the switching means.

5.2 The proposed amendment to the main request

The features set out in the inserted expression "by turning off the main power switch (15)" are implicitly known from D4, in particular from page 10, right column, lines 10 to 23.

Hence the Board finds that the subject-matter of the proposed amended claim 1 differs from the disclosure of D4 in the same features as are indicated above for the main request.

5.3 The auxiliary request

Since claim 1 according to the auxiliary request sets out essentially the same subject-matter as that of the main request, the subject-matter of claim 1 of the auxiliary request differs from the disclosure of D4 in the same features as are indicated above for the main request.

5.4 Conclusion on novelty

The subject-matter of claim 1 according to the main request and the auxiliary request is novel, Articles 52(1) and 54(2) EPC. The novelty of the claimed subject-matter was not contested by the Appellant at the oral proceedings.

6. *Inventive step*

The effect of the differences identified above is to turn off the satellite broadcast receiver section when its output signal is not needed. Hence the Board

regards the objective technical problem as reducing the energy consumption of the television.

The problem of reducing the energy consumption of domestic appliances is a usual concern, indeed it is evident in D4 itself, since one effect of the "Standby" state (in which specific sub-units of the television are disconnected) is to save energy. The disconnection of unused hifi appliances from the power supply is also mentioned in D1 and D2. Hence the skilled person starting from D4 would consider the problem of further reducing the energy consumption of the television as a matter of usual design.

The television known from D4 can determine from the state of the switching means whether the output of the satellite receiver section is needed. The claimed solution of not providing power to the satellite receiver section under these circumstances, thus solving the objective technical problem, falls within a skilled person's routine activities.

Hence the Board finds that the subject-matter of claim 1 according to the main and auxiliary requests lacks inventive step, Articles 52(1) and 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

M. Kiehl S. V. Steinbrener