

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [X] To Chairmen
(D) [] No distribution

D E C I S I O N
of 7 March 2003

Case Number: T 0214/01 - 3.5.1

Application Number: 92104147.1

Publication Number: 0504721

IPC: H04N 7/087

Language of the proceedings: EN

Title of invention:
Teletext transmissions receiver

Patentee:
EDICO S.r.l.

Opponent:
Interessengemeinschaft für Rundfunkschutzrechte E.V.

Headword:
Teletext receiver/EDICO

Relevant legal provisions:
EPC Art. 56, 114(2)

Keyword:
"Obligation to give reasons for not considering allegedly important evidence" (point 2.1)
"Problem-solution approach: treatment of non-technical aspects"
"Inventive step (no)"

Decisions cited:
T 0536/88, T 0910/90, T 0641/00

Catchword:
-



Case Number: T 0214/01 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 7 March 2003

Appellant: Interessengemeinschaft
(Opponent) für Rundfunkschutzrechte E.V.
Bahnstrasse 62
D-40210 Düsseldorf (DE)

Representative: Eichstädt, Alfred, Dipl.-Ing.
Maryniok & Partner
Kuhbergstrasse 23
D-96317 Kronach (DE)

Respondent: EDICO S.r.l.
(Proprietor of the patent) Via Kircher, 7
I-00197 Roma (IT)

Representative: Eisenführ, Speiser & Partner
Martinistrasse 24
D-28195 Bremen (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 7 December 2000
rejecting the opposition filed against European
patent No. 0 504 721 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. S. Wibergh
E. Lachacinski

Summary of Facts and Submissions

I. This is an appeal against the decision of the Opposition Division to reject the opposition against European Patent No. 0 504 721.

II. Claim 1 as granted reads as follows (including correction of typographical errors and numbering of features in the characterising portion effected by the Board):

Teletext transmission receiver, the teletext transmissions being under the form of a plurality of pages, inserted in a television signal, that can be of the static type, that is a single page, or of the multifile type, each being made up of a plurality of sub-pages that are substituted in time in the transmission cycle, comprising

- means (41,42,43) for receiving and demodulating the television signal,
- decoding means (46) for extracting the associated teletext signal,
- selection means (48,50,51) for selecting a chosen page (677) from those transmitted, and
- memory means (45) for memorising at least the content of one chosen teletext page,

characterised by the fact that the receiver comprises

(A) means for the parallel acquisition, during the same transmission cycle, of a plurality of teletext pages having different page numbers,

(B) means (102) for memorising in an appropriate memory (40) the content of all the sub-pages belonging to the page block (600 to 699) of which the chosen teletext page (677) is part, and

(C) means (40,101 to 113,201 to 212) allowing for the direct selection of any memorised sub-page (1,2,3,4,5,6) of a chosen multifile page (677), using the "next page" and "previous page" keys of the selection means.

III. The appellant (opponent) had opposed the patent on the ground that the invention was not new or did not involve an inventive step (Article 100(a) EPC). In addition to the documents cited together with the notice of opposition the appellant presented the following documents after expiry of the opposition period:

D3: DE-C-35 40 774

D4: "Computer Controlled Teletext", User's Manual, Valvo, dated 1 November 1983

D5: U. Wildhagen, "Teletext-Multi-Page-System mit TPU 2700", Elektronik 12/14.6.1985, pages 163 to 168

D6: G. Eitz et al., "Top - Ein Verfahren zur vereinfachten Anwahl von Fernsehtext-Tafeln durch den Zuschauer", Rundfunktechnische Mitteilungen No. 2, 1987, pages 83 to 93

D7: "TOP macht Fernsehtext benutzerfreundlich",
Nachrichten Technische Zeitschrift ntz, No. 11,
1989, pages 724, 726, 727.

- IV. According to the decision, the grounds for opposition did not prejudice the maintenance of the patent unamended. As to the documents filed outside the opposition period, D3 was not admitted but D4 and D5 were implicitly admitted (since discussed). D6 and D7 were not mentioned in the decision.
- V. In the statement setting out the grounds of appeal the appellant argued that the Opposition Division should have taken the late filed documents into consideration. In particular, D3 and D7 proved that memories capable of storing several hundred teletext pages had previously been suggested, a fact which constituted an important pointer to the invention.
- VI. In a communication pursuant to Article 11(2) of the Rules of Procedure of the Boards of Appeal it was stated that, following T 536/88 (OJ EPO 1992,638), document D5 was to be considered since it was described in the opposed patent as the starting point for the invention. D3, D6 and D7 were regarded as so important that they should be admitted. Furthermore, the obviousness arguments given in the grounds of appeal appeared convincing.
- VII. By letter dated 30 December 2002 the respondent filed three new versions of claim 1 as first, second and third auxiliary requests.

VIII. Oral proceedings before the Board were held on 7 March 2003. In the course of the proceedings the respondent replaced the claims of the first and second auxiliary requests.

The preamble of all claims being identical, the characterising parts of the auxiliary requests are as follows (with additions to the main request in italics):

The *first auxiliary request*:

(A) means for the parallel acquisition, during the same transmission cycle, of a plurality of teletext pages of *the multifile type contained in a page block and* having different page numbers,

(B) [no change]

(C) [no change].

The *second auxiliary request*:

(A) means for the parallel acquisition, during the same transmission cycle, of a plurality of teletext pages of *the multifile type contained in a page block and* having different page numbers,

(B) means (102) for memorising in an appropriate memory (40) the content of all the sub-pages belonging to the page block (600 to 699) of which the chosen teletext page (677) is part, *said means for memorising are determining the block to which the chosen teletext page (677) belongs,* and

(C) [no change].

The *third auxiliary request*:

(A) means for the parallel acquisition, during the same transmission cycle, of a plurality of teletext pages of *the multifile type*, having different page numbers,

(B) means (102) for memorising in an appropriate memory (40) the content of all the sub-pages of *the acquired teletext multifile pages*, belonging to the page block (600 to 699) of which the chosen teletext page (677) is part, and *belonging to at least part of the previous and following block with respect of the chosen teletext page*;

(C) [no change]

(D) means for varying the number of the multifile pages memorised in said appropriate memory (40) in accordance to which teletext page has been chosen.

- IX. The appellant requested that the decision under appeal be set aside and that the patent be revoked.
- X. The respondent requested that the appeal be dismissed and the patent be maintained or alternatively that the patent be maintained as amended on the basis of claim 1 of the first auxiliary request submitted at the oral proceedings, or on the basis of claim 1 of the second auxiliary request submitted at the oral proceedings, or on the basis of claim 1 of the third auxiliary request filed on 30 December 2002, claim 6 and column 10, lines 8 to 13 being deleted in accordance with all auxiliary requests.
- XI. At the end of the oral proceedings the Chairman announced the Board's decision.

Reasons for the Decision

1. *Construction of claim 1*

1.1 Feature (A) of claim 1 of the main request (corresponding to the patent as granted) is a "means for the parallel acquisition, during the same transmission cycle, of a plurality of teletext pages having different page numbers". This feature was originally worded "simultaneous acquisition of a plurality of teletext pages", with no reference to a transmission cycle (cf claim 8 as filed). In the view of both parties the feature should be understood in the limited sense that the receiver is capable of searching for more than one page at a time, thus reducing the time needed to acquire a plurality of pages. The Board accepts that the skilled person would interpret the feature in this way since it corresponds to a technique which, as acknowledged by the respondent, was well known at the priority date of the patent (see eg D5).

1.2 Feature (B) is a means for memorising in a memory the content of all the sub-pages belonging to the page block of which a chosen teletext page is part. The appellant has argued that this feature includes the possibility that *all* blocks are stored in memory. The Board agrees, since the claim contains no limitation to exactly one block and the patent describes embodiments in which more than one block are stored. Only the respondent's second auxiliary request contains language which tends to exclude the appellant's broad interpretation: "the means for memorising are determining the block to which the chosen teletext page belongs". As the respondent has pointed out, if all blocks are stored - regardless of what page the viewer

has chosen - there is no need to determine (actively) the block in which the selected page is contained. The respondent stated at the oral proceedings before the Board that this was the intended meaning of claim 1 of all requests. For this reason it was requested to delete claim 6, directed to the storage of "all the sub-pages of all the multifile pages comprised in all the page groups", as well as the corresponding part of the description.

2. *The prior art*

- 2.1 The Board has decided to admit documents D3, D5, D6 and D7 which were filed by the opponent on the "final date" in the meaning of Rule 71a EPC in preparation for the oral proceedings before the Opposition Division. Since the appellant has questioned the Opposition Division's choice not to admit all these documents into the proceedings (cf the statement of grounds, paragraph 5.3) the Board takes the opportunity to note that, although Article 114(2) EPC gives an opposition division discretion not to consider evidence not submitted in due time, the division is obliged to give reasons for its decision not to consider such evidence if the opponent - as in this case - remains of the view that it is relevant. It is not acceptable that (relevant) pieces of evidence filed outside the opposition period (here: documents D6 and D7) are not at all mentioned in the decision under appeal. Indeed, since the minutes of the oral proceedings are also silent on these documents there is no evidence on file that the Opposition Division actually took note of them.

- 2.2 It is common ground that document D6, which is an introduction to the TOP (Table Of Pages) System, discloses the features in the preamble of claim 1. It is explained that a "block" is the name given in the TOP System to a group of pages having thematically similar contents, such as sports or news (see eg paragraph 4). D6 also describes that up to six teletext sub-pages may be stored in a memory and that the viewer can go through the stored sub-pages in the forward direction by using the so-called "Tafeltaste" (see paragraph 8.6) and in the backward direction by using the same key together with a "Zurück-Taste" (see page 92, first complete paragraph). As accepted by the appellant, D6 does not disclose features (A) and (B) of claim 1.
- 2.3 D3 discloses storing pages and sub-pages as they are received. In Figure 2 the memory is depicted as large enough to contain 13 pages and sub-pages. At the top of column 2 it is pointed out that, if possible, the complete set of sub-pages having the same page number should be stored, for one or more page numbers ("bei sogenannten Mehrfachseiten... möglichst den vollständigen Satz einer oder gar mehrerer Mehrfachseiten zwischenspeichern zu können"). Memories capable of storing 255 pages are mentioned (column 1, lines 50 to 55).
- 2.4 D4 and D5 mention the possibility of acquiring more than one page in a single cycle.
- 2.5 D7 mentions as a future possibility the use of teletext page memories storing 64 or 256 pages (bottom of page 726, column 3).

3. *Inventive step*

3.1 Considering that, in the Board's view, only claim 1 of the respondent's *second auxiliary request* can reasonably be interpreted in the way the respondent proposes (cf paragraph 1.2 above), the Board will begin by considering this request.

3.2 D6 offers a suitable starting point. As already noted, besides the preamble of claim 1 this document discloses characterising feature (C), with the possible difference that not a (single) "previous page" key, but two keys, are used to call up stored pages. Such a minute difference does not, however involve an inventive step, nor has this been seriously argued.

3.3 Feature (A) of claim 1 concerns a way of acquiring a plurality of pages quickly by searching for them simultaneously rather than one at a time. The respondent acknowledges that the technique is known as such, eg from D5. It would be clearly obvious to use it for all pages and sub-pages to be retrieved. Thus this feature was an obvious addition to D6.

3.4 This leaves feature (B), on which the discussions have centred throughout the opposition proceedings. The feature states that the block to which a chosen teletext page belongs is determined and all sub-pages contained in it are stored in an appropriate memory. The effect is to reduce the time a viewer has to wait when jumping from the initial page to any sub-page within the same block. According to D6, if the viewer selects a page containing sub-pages the system stores only these sub-pages. Since the memory in D6 is limited

to eight pages (cf Figure 6) it is clear that more than one set of sub-pages will not be stored, and not even this set in full if it contains more than six sub-pages (cf paragraph 8.6).

3.5 The appellant has argued that the invention is obvious because it was natural to increase the size of the memory to store not just eight pages, but hundreds. D3 and D7 mentioned explicitly memories capable of storing about 256 pages. A viewer would be likely to access several pages within the same block since blocks were thematically arranged. The only constraint was the memory size, which was determined solely by economical considerations.

3.6 The respondent has argued in different ways. First, it has been pointed out that in D6 only a single page (consisting of up to six sub-pages) is stored. There was no suggestion to store more sub-pages, and even less to store all the sub-pages of one block, in particular of the block to which the page selected by the viewer belonged. Second, according to the invention the size of the memory was adapted to a single block, something which was expressed by the expression "*appropriate memory*". Third, the skilled person would have stored single teletext pages rather than sub-pages. Fourth, even if the skilled person had stored sub-pages he would not necessarily have picked all those belonging to one and the same block but, say, sub-pages following the page selected by the viewer (cf page 7 of the decision under appeal).

- 3.7 To assess the inventive activity associated with feature (B) the Board will apply the problem-solution approach as it is explained in decision T 641/00 (to be published in the EPO OJ).
- 3.8 D6 discloses the principle of storing automatically certain pages as a function of the page selected. The system does not merely wait for the user to choose a further page but stores a selection of pages to which the viewer is likely to jump, namely sub-pages having the selected page number (if they exist), and the first page of following blocks (cf Figure 6). Furthermore, although D6 describes a memory having only eight pages it would be clear to any user of a teletext receiver that the larger the memory is, the more pages and sub-pages can be retrieved without delay. Ideally all pages should be stored for quick retrieval. However, memory is not for free and realistic systems need to be designed to make optimum use of the available RAM. Thus, starting from D6 the skilled person would readily see the advantages of using larger memories but would also understand that, generally, not all pages can be stored. A selection must be made.
- 3.9 According to the invention the selected set of pages consists of "all the sub-pages belonging to the page block of which the chosen teletext page is part". The essential question is whether this particular choice involves an inventive step.
- 3.10 With these differences between the invention and the closest prior art in mind it is now possible to formulate the technical problem. The respondent suggested at the oral proceedings before the Board that the problem could be seen in improving the prior art

such that the receiver is made more user-friendly with respect to sub-pages. In the Board's view, however, this formulation is too vague. A technical problem should not be very general but must be related to the invention and take the technical advance achieved by the new features of the invention into account, as explained eg in decision T 910/90, paragraph 5 (not published in the EPO OJ; cf "Case Law of the Boards of Appeal of the European Patent Office", 4th edition 2001, page 107). Since in the present case the prior art suggests that the skilled person would consider a selection of pages to be stored in memory, a more specific problem can be stated. In the Board's view, the task of the skilled person can be seen as *improving the known receiver such that, using a memory of limited size, as many teletext pages as possible in which a viewer may be interested can be displayed with a minimum of delay.*

This problem refers to "pages in which a user may be interested". The reason is that the solution should not depend on the personal preferences of a viewer. A selection of pages based merely on their informational content does not involve an inventive step. As pointed out in decision T 641/00, paragraph 7, this kind of formulation is regarded as not being based on hindsight.

- 3.11 It is clear that the above problem may have more than one solution. For example, as the respondent has argued, one possibility would be to provide a large memory and store as many pages as possible, or, as suggested in the decision under appeal, to store pages starting from the current page. To the Opposition Division this was even the decisive argument in favour

of the invention: "...the skilled person... would not inevitably consider using said larger memory for storing the claimed sub-pages. On the contrary, there are in the Opposition Division's opinion many other possibilities some of which are suggested by the prior art" (see pages 6 and 7 of the decision, underlining in the original). The Board is however of the opinion that the mere fact that it is possible to imagine other, more or less obvious solutions does not necessarily imply that an invention involves an inventive step, or can be regarded as an inventive selection.

- 3.12 It follows directly from the technical problem that any invention characterised solely by a specific selection of teletext pages in which a viewer may be interested - be it one or more pages or one or more blocks - cannot be inventive. The choice to store (exactly) one particular block of pages is *from a technical point of view* arbitrary.

This conclusion is supported by the original disclosure which suggests alternatives to selecting a single block. They include storing all the sub-pages in the first three page groups (claim 9) or all the sub-pages of all of the multifile pages in all the page groups (claim 10). No technical advantage is indicated for any one of the selections.

It is noted in this connection that the requested deletion of claim 6 as granted - based on claim 10 as originally filed - does not change the content of the original patent application and therefore cannot change

the above conclusions: what the skilled person would understand as arbitrary in the application as originally filed cannot become a selection invention in the (amended) patent.

- 3.13 Nor is it inventive to store sub-pages (in distinction to single pages) as such, as the respondent has suggested (letter dated 30 December 2002, page 2). D6, and other documents as well, disclose this.
- 3.14 The selected block is, according to claim 1, the one of which the page chosen by the viewer is part, and means are provided for determining the block. As a consequence the viewer is neither required to indicate this block nor to initiate the storage operation - this is all automatic. It is however already a feature of the TOP System that, as a function of the page number chosen, certain pages are identified and stored automatically (cf point 3.8 above). Thus these aspects of feature (B) must also be regarded as obvious in view of D6.
- 3.15 The respondent has suggested that the memory in claim 1 is "appropriate" in the meaning that its size is optimised to the number of sub-pages of the block to be stored. The Board however agrees with the appellant that the patent application as originally filed offers no basis for the suggested meaning of the word "appropriate". Furthermore, even if the respondent's interpretation were accepted it is difficult to see why it should be inventive to use a memory of "appropriate" size.

3.16 For these reasons it is concluded that feature (B) of claim 1 was also an obvious addition to D6.

3.17 Finally, it must be examined whether there is a combination effect between the characterising features (A) and (B). (As already noted, feature (C) is essentially disclosed in D6.) The appellant has argued that there is no technical inter-relationship between them, and the Board agrees: the advantages of "parallel acquisition" are clearly not depending on the page selection. The respondent may be right in that both features contribute to making the device more user-friendly, but this is not the relevant criterion for an inventive combination. It is perfectly possible that functionally unrelated features have similar advantages, and almost unavoidable if the aim is such a general notion as "user-friendliness". As the appellant has argued, decisive is whether there exists a functional inter-relationship between the features.

3.18 It follows that the subject-matter of claim 1 of the second auxiliary request does not involve an inventive step (Article 56 EPC).

4. *The main and first auxiliary requests*

Since claim 1 according to the main and first auxiliary requests are wider in scope than that of the second auxiliary request, their subject-matters also lack an inventive step.

5. *The third auxiliary request*

5.1 The appellant has objected to the amendments made to claim 1 according to the third auxiliary request as lacking a basis in the application as filed, Article 123(2) EPC. The Board also have doubts in this respect. Still, since the problem might primarily be one of mere wording the Board prefers to interpret the amendments in the way the respondent explained them at the oral proceedings before the Board and examine whether the additions could render the claimed receiver inventive.

5.2 Claim 1 of the third auxiliary request differs from the preceding requests essentially in additions to feature (B) and a new feature (D). As to the first addition to feature (B) - "*of the acquired teletext multifile pages*" - the respondent admitted at the oral proceedings before the Board that it extends the scope of protection (Article 123(3) EPC). The Board therefore assumes that it was left in the claim by oversight and will not consider it further.

5.3 The second addition to feature (B) - "*belonging to at least part of the previous and following block with respect of the chosen teletext page*" - re-defines the set of sub-pages to be stored. For the reasons already given this is not regarded as an inventive selection.

5.4 The added feature (D) - "*means for varying the number of the multifile pages memorised in said appropriate memory (40) in accordance to which teletext page has been chosen*" - covers, according to the respondent, the case where different numbers of pages are memorised due to the fact that all blocks do not contain the same

number of teletext pages. The Board's attention was drawn to the passage at column 6, lines 11 to 27 of the patent, where it is mentioned that, in a certain teletext system, some blocks contain 200 sub-pages and some 120. This is however not an independent feature of the claimed receiver but rather the inevitable consequence of its use together with existing teletext transmitters. There are no receiver means which determine (actively) the number of pages to be stored.

5.5 Thus the respondent's third and last auxiliary request must also be refused (Articles 52 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. Steinbrener