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D E C I S I O N
of 19 November 2003

Case Number: T 0291/01 - 3.5.1

Application Number: 88307370.2

Publication Number: 0303450

IPC: H04N 7/04, H04N 5/76

Language of the proceedings: EN

Title of invention:
Digital signal transmission apparatus

Patentee:
CANON KABUSHIKI KAISHA

Opponent:
Koninklijke Philips Electronics N.V.

Headword:
Transmission apparatus/CANON

Relevant legal provisions:
EPC Art. 84, 123(2), 123(3)

Keyword:
"Amendments - added subject-matter (no)"

Decisions cited:
T 0726/96

Catchword:
-



Case Number: T 0291/01 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 19 November 2003

Appellant: CANON KABUSHIKI KAISHA
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Representative: van der Kruk, Willem Leonardus
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 18 December 2000
revoking European patent No. 0303450 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. W. Wibergh
B. J. Schachenmann

Summary of Facts and Submissions

- I. This is an appeal by the patent proprietor against the decision of the Opposition Division to revoke European Patent no. 0 303 450.
- II. This is the second time the present opposition case is the subject of an appeal. With decision taken 9 April 1998 (T 726/96) this Board - in a different composition - remitted the case for further prosecution, and in particular for allowing the Opposition Division to exercise its discretion whether to admit a new set of claims. During the following prosecution before the Opposition Division another set of claims was filed, with letter dated 4 October 1999. Oral proceedings were held and it was decided that claim 1 contained subject-matter not disclosed in the application as filed. The Opposition Division proposed an amendment to the characterising portion of claim 1 (cf the minutes, p. 2). A modified claim, not identical with the proposed version and filed as an auxiliary request, was subsequently rejected on the same grounds as the main request. On appeal, the patent proprietor withdrew its previous requests and submitted, together with the grounds of appeal filed 30 April 2001, new claims 1 to 17. These claims were said to be based on the auxiliary request before the Opposition Division. It was requested that the patent be maintained on the basis of these claims and, as a precautionary measure, that oral proceedings be appointed.
- III. Claim 1 of the set filed 30 April 2001 reads:
- "Digital signal recording apparatus comprising:

input means (10;101) for receiving component video signals representative of an image; and first means (14, 26, 28, 30; 101-110) operable (a) to form a first error check code using digital video data, (b) to form a second error check code using digital audio data, and (c) to form video blocks and audio blocks having the same block length as each other, each of the video blocks containing the said digital video data, the said first error check code and synchronisation data, and each of the audio blocks containing the said audio data, the said second error check code and synchronisation data; and second means (32-36;112,113) operable to record the said video blocks and the said audio blocks time division multiplexed with each other, characterised in that said first means (14, 28, 30; 103) is operable to arrange that each video block contains separate digital video data representing the luminance and colour components from vertically aligned portions of two successive lines of the image".

Claim 6 is a corresponding method claim.

- IV. In a communication, the Board expressed its preliminary opinion as to why the new claims fulfilled the requirements of Article 84 EPC and did not contravene those of Article 123(2),(3) EPC. It was made clear that the Board did not intend to examine the issues of novelty and inventive step.
- V. By letter dated 17 September 2003 the appellant (patent proprietor) declared that oral proceedings were not required if the Board did not maintain any objection to the claims under Articles 84 and 123(2),(3) EPC.

- VI. The respondent has made no submission in the appeal proceedings. In particular, it did not react to the communication of the Board referred to above.

Reasons for the Decision

1. *Admissibility of the claims filed on appeal*

Already in the Board's first decision concerning this opposition case it was pointed out that the admission of new claims is at the discretion of the Opposition Division. The oral proceedings before the Opposition Division were called in particular to discuss this issue in respect of the claims filed with letter dated 4 October 1999 (cf p. 4 of the decision under appeal). Although not explicitly stated in the decision under appeal it is clear that the Opposition Division admitted both these claims and those of an auxiliary request filed during the oral proceedings, since these claims form the basis for the decision. Claim 1 now on file is based on claim 1 of the auxiliary request before the Opposition Division and contains amendments actually suggested by the Opposition Division. It is therefore proper that the Board should examine the present claims, to the extent that this has been done in the decision under appeal.

2. *Support for the amendments (Article 123(2) EPC), clarity (Article 84 EPC)*

- 2.1 The preamble of claim 1 is identical with the preamble of claim 1 of the auxiliary request before the

Opposition Division. The Opposition Division did not object to the amendments to the preamble made during the opposition proceedings, nor does the Board see a reason for doing so.

- 2.2 The features of the characterising part of claim 1 are based on the patent application as filed, as will here be shown with references to the published version (EP-A-0 303 450), the patent specification being identical in this respect:

The "video block" is disclosed in figure 2D (embodiment 1; although this drawing is not explained it is clear from column 4, l. 18 to 31 that it illustrates a "video synchronisation block") and in figure 10 (embodiment 3).

The feature "separate digital video data representing the luminance and colour components" refers to the separate Y, I and Q areas in figure 2C resp. figure 8. The meaning is sufficiently clear (see also column 3, l. 4 to 12).

The "vertically aligned portions" are the "portions" in figure 2A resp. "areas" in figure 8. "Vertically aligned" means that the portions are all in the same column.

The "two successive lines of the image" are shown in figure 8. In the first embodiment the feature is supported by the wording "every two rows" (column 4, l. 22 to 24; figure 2D).

2.3 The meaning of the characterising part of claim 1 is therefore that each block contains the video data from two adjacent TV lines and lying within the same left-right boundaries. This is most clearly shown in figure 8.

It is noted that a "portion" in the meaning of claim 1 signifies a part of a TV line whereas a "portion" in the meaning of figure 2A contains the corresponding parts of 60 TV lines. However, the discrepancy is not such that claim 1 would be obscure or without support by the description.

2.4 The same applies to claim 6.

3. *Article 123(3) EPC*

The features added to claims 1 and 6 after grant limit the scope of protection, as does the excision of the transmitting mode contained in the claims as granted. Thus the scope of protection has not been extended.

4. *Conclusion*

To summarize, the Board finds that the amendments to claims 1 and 6 do not contravene Article 123(2),(3) EPC and that these claims are clear in the meaning of Article 84 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar:

The Chairman:

M. Kiehl

S. V. Steinbrener