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D E C I S I O N
of 12 December 2003

Case Number: T 0699/01 - 3.5.1

Application Number: 93104696.5

Publication Number: 0617556

IPC: H04N 5/445

Language of the proceedings: EN

Title of invention:

A broadcasting signal receiver

Patentee:

SONY DEUTSCHLAND GmbH

Opponent:

Interessengemeinschaft für Rundfunkschutzrechte GmbH
Schutzrechtsverwertung & Co. KG

Headword:

Operation of pointing means/SONY

Relevant legal provisions:

EPC Art. 52(1), 56

Keyword:

"Inventive step (yes)"

Decisions cited:

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Catchword:

-



Case Number: T 0699/01 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 12 December 2003

Appellant: Interessengemeinschaft
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
3 April 2001 concerning maintenance of European
patent No. 0617556 in amended form.

Composition of the Board:

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

Summary of Facts and Submissions

I. The Appellant (Opponent) lodged an appeal against the interlocutory decision of the Opposition Division finding the patent in amended form to meet the requirements of the EPC (Article 102(3) and 106 (3) EPC). The Appellant requested that the decision be set aside and the patent be revoked.

II. Claim 1 as considered allowable by the first instance reads as follows (for reasons explained later in this decision the Board has inserted identification letters "a" and "b" in square brackets into the claim):

"An audio and/or video reproducing apparatus comprising:

- (a) input means (5,6) supplied with one or more audio and/or video input signal as one or more program(s);
- (b) processing means (8,9,10,11,12,13,14,25) connected to said input means and for processing the audio and/or video input signal;
- (c) reproducing means (2) connected to said processing means and for reproducing a sound and/or a video picture corresponding to the audio and/or video input signal;
- (d) pointing means (3;3') for operation by a user and for transmitting a control signal (RS;RS')

- (e) control means (15,16,17,18,19,20,21,22,23) connected to said processing means for receiving the control signal from said pointing means, decoding the control signal, generating a control picture signal in response to the decoded control signal and controlling said processing means; and
- (f) display means (2) connected to said control means and for displaying a control picture (CP) which corresponds to the control picture signal and includes a plurality of control areas (CA) and a pointer (P) movable within the control picture in response to operation of said pointing means by the user; wherein the control picture and/or any of the plurality of control areas and/or the processing means are controllable according to a selected function of said processing means by operation of said pointing means in relation to one of the plurality of control areas pointed at by the pointer,

characterised in

- that after said control picture signal has been generated, [a] said pointer (P) must be initially positioned on an arbitrary absolute location selected by the user in said control picture indicated by operating said pointing means before said pointer can be moved relative to said absolute location in accordance with a direction and distance indicated by said user operated pointing means [b].

The Opposition Division in its decision concluded that the subject-matter of the claim was novel and involved an inventive step having regard to the prior art. The closest prior art document

D1: EP-A-0 390 041

was said to disclose the preamble, but did not give a skilled person the idea that in the first phase when the pointer had to be positioned at a location in the control picture, the location could be arbitrarily selected. The decision also mentioned the prior art document

D2: IEEE Transactions on Consumer Electronics,
Vol. 34, No. 3, August 1988, New York, N.Y. USA,
pp. 814 to 818

which had *inter alia* been introduced by the Opponent in the opposition proceedings.

III. The Appellant, in the statement of grounds of appeal, expressed the opinion that the teaching of document D1 as well as that of D2 in combination with the teaching of document

D8: Periodical "c't", No. 4, 1991, "Mit viel
Fingerspitzengefühl", pp. 186 to 187

would lead the skilled person to the invention according to claim 1 in an obvious way.

According to the Appellant, both D1 and D2 disclosed the preamble of claim 1 as maintained. D8 disclosed a multi functional input device for a PC. This device had different modes, also an absolute mode ("Absolute for Pointing") in which a graphics tablet was emulated. At the first touch of a finger on the pad an absolute position was identified and a cursor was created on the screen. This corresponded to claim 1 as maintained, wherein the pointer was initially positioned at an arbitrary absolute location selected by the user. The cursor could then be dragged at two different speeds and this apparently caused a movement relative to the first absolute position. Thus by combining the teachings of D1 or D2 with D8 the skilled person would arrive at the invention in an obvious way.

IV. The Respondent requested that the appeal be rejected as not admissible since it was alleged to be based on a new ground for opposition, i.e. lack of inventive step. Furthermore, he expressed the opinion that late-filed document D8 was not relevant and should not be admitted into the proceedings.

V. In an annex to the summons to oral proceedings the Board underlined the fact that inventive step had already been discussed in the first instance proceedings and that the appealed decision explicitly dealt with it, so that this issue did not appear to relate to a fresh ground for opposition raised for the first time in appeal proceedings. Moreover, in the Board's opinion document D8, which concerned a PC input device, should be allowed into the proceedings. Having regard to the fact that document D2 showed (p. 814, left column, under "Introduction") the close

relationship between TV and PC technology, it appeared to be self-evident for the skilled person in the field of television to also seek to find solutions in the PC field.

VI. Oral proceedings were held on 12 December 2003.

1. The Appellant (Opponent) requested that the decision under appeal be set aside and that the European patent be revoked.

The Respondent (Patentee) requested that the decision under appeal be set aside and that the patent be maintained on the basis of claim 1 and page 6 of the patent specification filed during the oral proceedings.

2. Claim 1 differs from claim 1 as maintained (see point II above) in that the following text has been inserted into the claim as maintained at the position of bracket [a]:

"an absolute mode of positioning said pointer (P) is initially entered in which"

and the following text at the position of bracket [b]:

", and

- that after said initial positioning of said pointer (P) a relative mode of positioning said pointer (P) is automatically entered in which said pointer (P) can be moved

relatively in accordance with a direction and distance indicated by said user operated pointing means".

3. The argumentation of the Appellant can be summarised as follows:

Both D1 and D2 disclosed the preamble of claim 1. The Respondent had argued that features (b) and (e) of the preamble were not disclosed in D1. However, having regard to the general wording of claim 1, they could, according to the opinion of the Appellant, be read onto D1. "Processing means" (feature (b)) was a very general term and could be well identified in D1 (Figure 2, ref. numerals 42, 37). Also feature (e) was clearly disclosed in D1, since it was apparent from, for example, Figure 4, that a control picture signal was generated, as a cursor was shown (cf. also column 3, lines 8 to 15). D8 disclosed most of the features of the characterising part of claim 1 in making clear that in the "Absolute for pointing" mode the cursor was created at the arbitrary position where the finger touched the pad. Although D8 did not mention that there was a relative mode within the mode of "Absolute for pointing", it was apparent that, after the cursor had been created, a relative movement was performed which corresponded to the mode identified in claim 1. In the text it was namely mentioned that the movement could be performed at two different speeds. This meant that the movement had to be relative, since it would not have been necessary to speak about two speeds (D8, page 186, middle column, second paragraph) if

a single absolute mode had been used. The skilled person, starting from the preamble of claim 1 (corresponding to the teaching of D1 or D2) would have tried to improve the menu control system disclosed in the prior art, making it more comfortable. By using the idea of comfortable cursor operation, as disclosed in D8, the skilled person would have arrived at the invention in an obvious way.

4. The Respondent doubted that the features (b) and (e) could be read onto the description of D1. The problem to be solved could be seen in making the control function of the apparatus much quicker than in the prior art systems. It had to be recalled that 10 years ago, at the filing date of the patent application, menu operable control was not usual. At that time the cursor was often moved stepwise by operating many keys or a single key many times. According to the invention, the user of the apparatus himself created the cursor at an arbitrary position and thereafter could move the cursor to the correct point to perform the specific operation. Moreover a skilled man would not turn to D8 because it was concerned with a device which could be connected to a PC and used for different operation modes. The "Absolute for Pointing" mode was concerned with graphics and had no relation to television techniques. The Respondent was therefore of the opinion that the skilled person, having regard to the teaching derived from the combination of the documents cited by the Appellant, would not arrive at the invention.

5. At the end of the oral proceedings the Chairman of the Board announced the Board's decision.

Reasons for the Decision

1. The appeal complies with the requirements stated in Rule 65(1) EPC and is therefore admissible.
2. The Board agrees with the Opposition Division that the amendments made in Claim 1 as considered allowable by the Opposition Division meet the requirements of Article 123(2) EPC. Thus it is agreed that the following text in the characterising part of amended claim 1, i.e. "said pointer (P) **must [replaces "has to"]** be initially positioned on an **arbitrary [added]** absolute position **selected by the user [added]**", is supported by the original description (see published application, column 10, lines 17 to 21 which corresponds to the patent specification, column 9, lines 23 to 26).

The Board is of the opinion that the amendments introduced into the claim before the Board, i.e. the texts corresponding to **brackets [a] and [b]** above, are supported by the following passage in the description (see patent specification, column 9, lines 23 to 33, corresponding to the published application, column 10, lines 17 to 29):

"when the panel 3'a is **initially** [put in bold by the Board] depressed, an absolute location of the depressed point TP reflects on the location where the pointer P

is indicated in the **absolute mode**. This makes it easy for the user to find the initial location of the pointer P. Followingly the mode is **automatically changed to the relative mode** so that even if the finger once departs from the panel surface and contacts again at the different point TP', the location of the pointer P does not change unless the finger is moved on the surface of the panel 3'a during depressing the panel 3'a".

Thus this part of the application teaches that the invention has two modes, an "absolute mode" and a "relative mode". Therefore claim 1 meets the requirements of Article 123(2) EPC.

3. The Board takes the view of the Appellant that the preamble of claim 1 is disclosed by both of the documents D1 and D2. Nevertheless it comes to the conclusion that the subject-matter of claim 1 also meets the requirements of Articles 52(1) and 56 EPC in the light of the available prior art.

During the oral proceedings the Respondent gave a convincing interpretation of the second paragraph of column 9 of the patent specification (lines 15 to 39), the text of which corresponds to the original description. This part of the specification describes a remote control for a television set consisting of a touch panel and a contacting member, such as a finger (cf. also column 8, first full paragraph). By using the remote control the user can arbitrarily choose where to initially create the pointer (cursor) on the screen.

For example, by touching the touch panel (in claim 1: "**pointing means**") with a contacting means, such as a finger (as proposed in column 9 mentioned above), and directly creating the cursor (claim 1: **pointer**) on the correct menu key the command can thus be immediately executed from the first position of the pointer (cursor), i.e. from the **arbitrary absolute location**. Since the operation of the pointer, if it is moved further, is automatically switched to the relative mode, the pointer always remains at the initial point after the first initial touch, as long as the contacting means is not moved or is removed from the panel and thus has no contact with the panel. Thus once the contacting member (for example, a finger), after the initial contact with the touch panel, is not any longer in contact with the touch panel, the cursor nevertheless remains on the screen. Only by touching the touch panel again and moving the contacting member on and across the touch panel can the cursor be moved from its absolute location and across the screen. Therefore incidentally touching the touch panel again after the first initial contact does not create a new cursor with a new absolute location, since only the initial contact produces the absolute location of the cursor.

This has not been shown to be known from the above prior art disclosing remote controls for video or audio apparatuses. Instead, the cursors in menus on TV-screens are always created automatically in specific predefined areas of the screen, whereafter they can be moved in discrete steps by operation (mostly by pushing) of specific (mechanical) keys once or many times to arrive at the area representing the desired

menu selection. Both D1 and D2 disclose remote controls of this type. Hence, the claimed subject-matter differs from such remote controls by the features of the characterising portion of claim 1.

Thus the problem to be solved can be seen, as also proposed by the Respondent, in the simplification of the menu control of a television in that the user should be able to more quickly position the pointer at the correct position in the menu (in claim 1: "the control picture") on the screen (in claim 1: "display means").

It appears to the Board that the teaching of D8 concerning graphics design cannot lead the skilled person to the invention. The apparatus shown in D8 concerns a separate multi functional apparatus which must be connected to a PC and therefore does not appear to hint that it could also be used in the TV field, since its design and function is complicated and must be switched between different modes. The absolute mode (see D8, Figure, page 187, and page 186, middle column, second paragraph: "absolute for pointing") according to D8 is apparently created for drawing graphics designs and thus has a quite different purpose to the present invention. From the passage referred to by the Appellant (D8, page 186, middle column, second paragraph) it may be concluded that the cursor can be located by touching the screen and then drawn across the screen, whereby different speeds are provided for coarse and fine positioning (emulating a graphics tablet). However, it is not clear from the teaching of D8 whether there is indeed a relative movement in the sense of the invention. In particular, D8 does not

mention that an arbitrary absolute location of the cursor is created only at the initial touch of the panel and that a relative mode of moving the cursor is then automatically selected. The existence of different positioning speeds is only disclosed in the context of an absolute mode and does not point to a mode change.

The use of the different modes of the invention however provides some advantages to the user of a TV set. For example, after a certain TV program has been chosen by selecting the corresponding key on the menu on the TV screen, the transmission is not switched to another program if the contacting means (for example, a finger) by mistake contacts a position on the touch panel corresponding to another program key on the menu. The cursor (pointer) can thus only be moved by a **relative movement** from the first **absolute location**. This movement can be performed by moving the contacting means in the desired direction and, for example, to a position representing a key for another TV program.

Moreover it is certainly true, as argued by the Respondent, that the possibility of directly selecting a key among many keys on the TV screen menu can be performed quicker with the invention than by a traditional TV remote control having many keys and different key functions which must be used to operate the cursor on the screen, as shown in the prior art.

The Board is therefore of the opinion that the invention is not obvious to a skilled person and that it therefore involves an inventive step.

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 with the order to maintain the patent as amended in the following version:

Description:

Pages 2 to 5 and 7 to 15 of the patent specification, Page 6 received during the oral proceedings of 12 December 2003.

Claims:

No. 2 to 13 of the patent specification, No. 1 received during the oral proceedings of 12 December 2003.

Drawings:

Pages 20 to 37 of the patent specification.

The Registrar:

The Chairman:

M. Kiehl

S. V. Steinbrener