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D E C I S I O N
of 30 May 2006

Case Number: T 1160/02 - 3.5.04

Application Number: 93303103.1

Publication Number: 0567316

IPC: G11B 27/10

Language of the proceedings: EN

Title of invention:
Information reproducing apparatus

Patentee:
PIONEER ELECTRONIC CORPORATION

Opponent:
Interessengemeinschaft für Rundfunkschutzrechte GmbH
Schutzrechtsverwertung & Co. KG

Headword:
Information reproducing apparatus/PIONEER

Relevant legal provisions:
EPC Art. 56, 54

Keyword:
"Inventive step (no)"
"Novelty (yes)"

Decisions cited:

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Catchword:

-



Case Number: T 1160/02 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 30 May 2006

Appellant: Interessengemeinschaft
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 10 October 2002
rejecting the opposition filed against European
patent No. 0567316 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: F. Edlinger
Members: A. Teale
J. Willems

Summary of Facts and Submissions

I. The appeal is against the decision by the opposition division to reject the opposition against European patent No. 0 567 316. The opposition was based on the grounds for opposition under Article 100(a) EPC, relying on lack of novelty and inventive step, and cited, amongst others, the following prior art document:

O1: EP 0 330 271 A1.

II. Claim 1 of the patent reads as follows, the Board having adopted the labelling scheme used by the opponent on page 3 of the grounds of opposition:

"An information reproducing apparatus (200), on which a recording medium having record information and table of contents information of the record information is mounted, for controlling a reproduction operation of the record information on the basis of the table of contents information, said apparatus comprising:

A. a first memory (2) for temporarily storing reproduction control information including the table of contents information for performing the reproduction operation;

B. reproduction means (102) for reproducing said recording medium on the basis of the reproduction control information stored in said first memory;

C. a second memory (3) of non-volatile type for storing the reproduction control information in correspondence with each recording medium; and characterised by:

D. memory control means (1) for detecting an operation indication or an operation condition to

anticipate a continuous stop condition of the reproduction operation, and storing into said second memory the reproduction control information stored in said first memory when the operation indication or the operation condition to anticipate the continuous stop condition of the reproduction operation is detected."

III. In the appealed decision it was stated that the DSP (digital signal processor) mode display change described in the patent (columns 7 and 8) was not considered to involve anticipating a continuous stop condition within the meaning of claim 1. It was also observed that, whilst claim 1 referred to control information of a current reproduction operation being transferred to the second memory, O1 disclosed control information for future reproduction operation being stored into volatile as well as non-volatile memory. The subject-matter of claim 1 was found to be novel because it differed from the disclosure of O1 essentially in feature "D", which solved the problem of avoiding unnecessary updating of the non-volatile memory. Since none of the prior art documents on file even hinted at feature "D", the subject-matter of claim 1 was also found to show inventive step.

IV. In the statement of grounds of appeal the opponent (appellant) argued that the subject-matter of claim 1 lacked novelty in view of O1, since the operation of storing changed reproduction control information in the working memory and the non-volatile memory 6 (see O1, column 8, lines 44 to 48) amounted to a continuous stop condition, as set out in claim 1, since it corresponded to the changing of DSP mode data mentioned in the description of the patent in suit (see column 7,

lines 21 to 34) and, according to Article 69(1) EPC, the claims were to be interpreted in the light of the description and drawings. The patent was concerned with the problem of automatically storing reproduction control information, which had been temporarily stored in the volatile memory of a CD player, in a non-volatile memory, so that it was available the next time the same CD was played.

The appellant also argued that the subject-matter of claim 1 lacked inventive step starting from O1, since a skilled person would be aware that a microcomputer had a volatile memory for storing information such as position data in volatile memory during reproduction and that it would be obvious to leave such information in volatile memory during reproduction operation and to only transfer it to non-volatile memory when it was recognized that the information reproducing apparatus was about to be turned off. It was also argued that the subject-matter of claim 1 lacked inventive step in view of various combinations of prior art documents, including two documents filed with the statement of grounds of appeal, to solve the problem of avoiding unnecessary updating of the non-volatile memory.

- V. In an annex to a summons to oral proceedings the Board expressed doubts as to whether the problem given in the appealed decision (see point III above) could be considered as the objective technical problem solved by the opposed patent over the prior art disclosed in O1. The Board also questioned whether the patent disclosed a change of DSP mode display always implying the prediction of a continuous stop condition and expressed doubts whether O1 disclosed the prediction of a

continuous stop condition. The Board also pointed out that the two documents filed with the grounds of appeal both concerned the detection of an imminent loss of power leading to a "power off" condition and questioned whether this constituted a "continuous stop condition" within the meaning of claim 1.

- VI. The appellant stated in a letter that he would not attend the oral proceedings and requested that the decision be set aside and the patent revoked in its entirety.
- VII. Oral proceedings were held on 30 May 2006, the appellant being absent, as announced in advance. The Board expressed the opinion that the two documents filed with the grounds of appeal could be seen as a reaction, submitted in due time, to the finding in the appealed decision that feature "D" was not known per se and that the objective technical problem was that of avoiding unnecessary updating of the non-volatile memory.
- VIII. The respondent stated in the oral proceedings that he fully agreed with the appealed decision and questioned the relevance of the two documents filed with the grounds of appeal, since these related to the abnormal condition of a power failure, whilst the continuous stop condition referred to in the patent was not an abnormal condition. At the end of the oral proceedings the respondent stated that his only request was that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

2. *The construction of feature "D" of claim 1*

In the oral proceedings the respondent's representative explained that in the context of the patent an "operation indication" covered, for example, a user input, an "operation condition" covered, for example, a routine performed by the apparatus and to "anticipate" not only meant to "expect", but also covered the broader concept of "to come before". The representative stated that, for example, feature "D" covered the case where pressing the "eject" button of the CD player triggered storage in the non-volatile memory. The Board finds that claim 1 can reasonably be construed in this way.

3. *Novelty*

O1 forms the closest prior art and concerns CD players in which reproduction control information in the form of preferred selections are temporarily stored in the working storage of the microcomputer 3 and subsequently stored in non-volatile memory 6; see column 3, lines 19 to 54, column 5, lines 8 to 13 and column 8, lines 22 to 31. It is common ground between the parties that all features of the preamble of claim 1 are known from O1.

The Board is not convinced by the appellant's argument that storing adapted preferred selections in memory 6 of O1 constitutes the detection of an operation indication or condition to anticipate a continuous stop

condition within the meaning of present claim 1. The patent does not disclose that the mere change of DSP mode display always implies the prediction of a continuous stop condition. According to column 8, line 43 to column 9, line 1 of the patent, when a magazine is inserted into the multi CD player, a change of DSP mode for each CD can be made and a continuous stop condition for the present CD can be predicted, since the player will move on to the next CD in the magazine (see also column 9, line 48 to column 10, line 42). However the description also states that a change of DSP mode display can also occur "at the time of the normal reproducing operation"; see column 8, lines 48 to 51 and Figure 6 (steps S5, S9, S10, S5). Under the latter circumstances a continuous stop condition would not be predicted, so that a change in DSP mode display alone is not sufficient to anticipate a continuous stop condition.

O1 speaks of "subsequently" storing preferred selections (column 8, lines 24 to 31) and does not mention the detection of situations in which the present CD or the present magazine will not be reproduced for the time being. Thus O1 does not disclose the prediction of a continuous stop condition explicitly, nor can such a prediction be seen as implicitly disclosed in the storage of preferred selections. Hence the Board agrees with the finding of the first instance in the appealed decision that feature "D" is not known from O1. The subject-matter of claim 1 is consequently novel, Article 54(1,2) EPC.

4. *The objective technical problem*

According to the contested decision, starting from O1 the objective technical problem solved by feature "D" can be seen as avoiding unnecessary updating of the non-volatile memory. The Board does not share this opinion for two reasons. Firstly, this problem is not disclosed in the patent. Instead, the patent mentions several times that the object is to provide an information reproducing apparatus requiring minimal manual operation input by the user; see column 2, lines 4 to 9. Secondly, the claimed apparatus does not always result in less updates of the non-volatile memory than in O1, so that it does not always solve the problem given in the appealed decision. There is no disclosure in O1, in particular column 8, lines 22 to 31, that pressing the "stop" key during CD reproduction would directly cause the non-volatile memory 6 to be updated. However, according to the patent, pressing the "stop" key of the CD player would involve the detection of a condition to anticipate a continuous stop condition and the non-volatile memory would consequently be updated. Under these circumstances the claimed apparatus would result in more and not less updates of the non-volatile memory than in O1.

The Board regards the objective technical problem as being that derivable from column 2, lines 4 to 9 of the patent, namely to provide an information reproducing apparatus requiring minimal manual operation input by the user. The mere formulation of such a problem does not involve an inventive step, since it relates to an

issue which would inevitably arise in the design of an electronics product of the sort known from O1.

5. *Inventive step*

In the oral proceedings the respondent argued that O1, in particular column 8, lines 12 to 19, could be understood to mean that the preferred user selections were not necessarily stored. In view of figure 4 the Board does not accept this argument. The figure shows that if a CD whose identification data have not been previously stored is loaded into the player then the user is given the option in step S3 of entering preferred selections. If the user chooses to do so then in step S4 the user can enter up to three selections which are temporarily stored in the working storage and "subsequently" stored in non-volatile memory (see column 8, lines 19 to 31), there being no suggestion that the storage step could be bypassed.

A skilled person starting from O1 and implementing step S4 to minimize manual operation input would seek to automate the storage of the reproduction control information, in other words the preferred selections, in the non-volatile memory. It is implicit in O1 that the preferred selections could be lost due to what is termed in the present patent a "continuous stop condition", meaning that the present CD will not be reproduced for the time being, for instance if the disk were changed or the CD player turned off (see O1, column 5, lines 9 to 13) before the user had instructed the player to store the preferred selections in non-volatile memory, as required for the prior art apparatus referred to in O1; see column 1, lines 23

to 29. This is undesirable for an apparatus where the reproduction control information should be available in the non-volatile memory the next time this CD is loaded; see O1, column 1, lines 30 to 52. Thus a skilled person starting from O1 would inevitably realize that "subsequent" storage of the preferred selections in non-volatile memory has to be done before an operation condition or indication occurs which would lead to a loss of the reproduction control information not yet stored in the non-volatile memory. In other words, it needs to anticipate a continuous stop condition. Under these circumstances the detection of a user input, such as pressing the "eject" button, or a routine performed by the apparatus, termed an "operation indication" and an "operation condition" respectively in the patent, to anticipate such a continuous stop condition, as set out in feature "D" of claim 1, amounts to a usual matter of design.

The subject-matter of claim 1 is consequently not considered to involve an inventive step, Article 56 EPC. It follows that a ground for opposition mentioned in Article 100(a) EPC prejudices the maintenance of the European patent and the patent has to be revoked pursuant to Article 102(1) EPC.

6. *The two prior art documents filed with the statement of grounds of appeal*

Since the Board has found that the subject-matter of claim 1 lacks inventive step for the above reasons, the Board has been able to decide on the respondent's only request without needing to consider the inventive step of claim 1 in the light of further documents, including

the two documents filed with the statement grounds of appeal.

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:

D. Sauter

F. Edlinger