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**Datasheet for the decision  
of 4 May 2007**

**Case Number:** T 0677/04 - 3.5.04

**Application Number:** 97917368.9

**Publication Number:** 0856226

**IPC:** H04N 7/16

**Language of the proceedings:** EN

**Title of invention:**

Security device managed access to information

**Applicants:**

Koninklijke Philips Electronics N.V., et al.

**Opponent:**

-

**Headword:**

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**Relevant legal provisions:**

EPC Art. 111(1)

**Keyword:**

"Claims amended on appeal - fresh case"  
"Remittal (yes)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0677/04 - 3.5.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.04  
of 4 May 2007

**Applicants:** Koninklijke Philips Electronics N.V., et al.  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 26 January 2004  
refusing European application No. 97917368.9  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** F. Edlinger  
**Members:** M. Paci  
B. Müller

## Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing European patent application No. 97 917 368.9.
- II. The decision under appeal was based on the ground that the subject-matter of independent claims 1, 5, 6 and 7 lacked novelty (Article 54(1) and (2) EPC) in view of common general knowledge.
- III. The cover sheet of the published application (published as international application WO 97/42762 A2) indicated the following two applicants: Philips Electronics N.V. (later renamed Koninklijke Philips Electronics N.V.) for all designated contracting states and Philips Norden AB for Sweden only. The indications concerning the applicants were confirmed in the request for the grant of a European patent.
- IV. In the subject line of both the notice of appeal and the statement of grounds of appeal, both signed by a professional representative (Article 134 EPC) who had acted as one of several representatives before the first instance, Koninklijke Philips Electronics N.V. was indicated as appellant. No reference was made to Philips Norden AB.
- V. In reply to the annex to the summons to oral proceedings another professional representative filed a letter dated 13 February 2007. With that letter the professional representative submitted a new set of claims 1 to 16 (replacing all previous claims) and requested that a patent be granted on the basis of this

set of claims or, alternatively, that the case be remitted to the first instance for further examination.

VI. Independent claim 1 reads as follows:

"A system for managing access to audio and/or audiovisual information (INF) by a group of subscribers, the system comprising a receiver (REC) and a security device (SD) cooperating with the receiver, the receiver (REC) comprising

means (FRE, FIL) for receiving the information in scrambled form and for receiving an entitlement message (EMM) concerning an entitlement for at least a subset of said subscribers to access the information, and

a descrambler (DES) for descrambling the information,

the security device being configured to process the entitlement message to obtain an entitlement data object (DO, EDO) associated with the information, and to store said entitlement data object in the security device,

the descrambler being configured to descramble the information only if the entitlement data object associated with the information is present in the security device and allows the descrambling,

the receiver further comprising a circuit (CON) for retrieving additional data (ADA) related to the entitlement data object,

characterized in that a pointer (PO) indicating a location (LO) from which the additional data may be obtained is stored in the security device,

in that the security device is arranged to transmit the pointer to the receiver, and

in that the receiver is arranged to receive the pointer from the security device and to retrieve the additional data as indicated by the pointer."

Claims 2 to 16 are dependent on claim 1.

VII. The reasoning of the examining division in the decision under appeal regarding independent claims 1 and 5 then on file can be summarised as follows:

The security device of claim 1 is anticipated by a well-known smart card, in particular a normal bank card or credit card, having a PIN code which must be entered by the user to access information about his/her account (such as the balance of the account) or other additional information relating to the account. Data for identifying the account number are stored in the smart card and constitute a pointer indicating a location and are transmitted to a receiver as specified in claim 1.

The receiver of claim 5 lacks novelty when compared to a cash dispenser or an account printer/display into which the above smart card is inserted.

Alternatively, the security device of claim 1 is also not novel in view of a normal personal computer (PC) protected by a password and connected via the Internet to an Internet server. URLs or e-mail addresses stored in the PC correspond to the pointer of claim 1. The receiver of claim 5 is then anticipated by the Internet server.

VIII. The appellant essentially argued as follows regarding novelty and inventive step.

A cash dispenser or account printer/display does not manage access to audiovisual information by a group of subscribers. No scrambled audiovisual information or entitlement messages concerning entitlements to access that audiovisual information are received by such devices. These devices do not process entitlement messages to obtain entitlement data objects that are stored in a security device, nor do any such objects permit a descrambler to descramble the audiovisual information.

An Internet server storing a website likewise does not manage access to received audiovisual information by a group of subscribers. No scrambled audiovisual information or entitlement messages concerning entitlements to access that audiovisual information are received by such a server. The server also does not process entitlement messages to obtain entitlement data objects that are stored in a security device, nor do any such objects permit a descrambler in the server to descramble the audiovisual information. At best the server may *transmit* scrambled audiovisual information, but not *receive* it.

### **Reasons for the Decision**

1. The appeal is admissible.

2. *Amendments to claim 1*

2.1 The amendments to claim 1 made on appeal are disclosed in the application as filed (see in particular lines 3-4 on page 1, lines 14-33, on page 5, lines 1-7, 13-22 and 33-34, on page 6 and figure 5 of WO 97/42762 A2). The terminology used in claim 1 is adequately clear in the context of the claim.

2.2 Accordingly, the board sees no objections under Articles 84 and 123(2) EPC concerning the single independent claim 1, which constitutes the basis for remitting the case to the first instance for further prosecution. The board did not examine the amendments to dependent claims 2 to 16 and the description.

3. *Novelty and inventive step*

3.1 Claim 1 is now directed to a system for managing access to audio and/or audiovisual information by a group of subscribers, the system comprising a receiver and a security device cooperating with the receiver.

3.2 In the decision under appeal the examining division used two pieces of prior art apparently held to be so notoriously known to belong to the common general knowledge that no written evidence needed to be cited against a security device and a receiver which were individually claimed and each defined in much broader terms.

3.3 The appellant has not disputed the fact that these pieces of prior art were indeed known at the priority date of the application.

- 3.4 The first piece of prior art referred to in the appealed decision was a bank card or credit card cooperating with either a cash dispenser or an account printer/display.

In the board's view, in the absence of evidence to the contrary, the information received by a cash dispenser or by an account printer/display cannot be assumed to include scrambled audio and/or audiovisual information. Nor can the board see any reason why the skilled person would want such information to be received by a cash dispenser or account printer/display.

Accordingly, the subject-matter of claim 1 is neither disclosed nor suggested by this first piece of prior art.

- 3.5 In the appealed decision the examining division also argued that the then claimed security device and receiver were anticipated by a second piece of prior art consisting of a PC protected by a password and an Internet server.

A password protected PC (having an URL stored as a pointer to a location) and an Internet server hosting a website (the location from which additional data may be obtained) could be regarded as forming a system for managing access to audio and/or audiovisual information by a group of subscribers provided that the server stored audio and/or audiovisual information whose access was restricted to paying subscribers. However, the board has no evidence that such a system comprising



the following additional features of claim 1 existed before the priority date of the application:

- the server receives the audiovisual information in scrambled form,
- the server receives an entitlement message for at least a subset of the subscribers to access the audiovisual information,
- a subscriber's PC (considered as a "security device") processes the entitlement message to obtain an entitlement data object associated with the information and to store the entitlement data object in the PC, and
- the server comprises a descrambler being configured to descramble the audiovisual information only if the entitlement data object associated with the information is present in the subscriber's PC and allows the descrambling.

In the absence of any supporting evidence, there is no reason to assume the presence of the above features or to regard them as obvious.

3.6 For the above reasons the board regards the subject-matter of claim 1 as novel and inventive when compared to the prior art referred to by the examining division in the appealed decision.

#### 4. *Remittal*

4.1 During the appeal proceedings claim 1 - the sole remaining independent claim - has been amended to such an extent that the reasons in the appealed decision for refusing the application no longer apply. The subject-

matter of this claim has not been examined by the examining division in the light of the documents cited in the search report.

- 4.2 Under these circumstances, in order to give the appellant the opportunity to defend his claims before two instances, the board considers it appropriate to exercise the power conferred upon it by Article 111(1) EPC and to remit the case to the department of first instance for further prosecution, as requested by the appellant.
- 4.3 The present decision of the board will have effect on the decision in first instance as a whole for all designated contracting states and for both Koninklijke Philips Electronics N.V. and Philips Norden AB as joint applicants, and the proceedings will resume with both of these entities. This conclusion is based on the fact that Koninklijke Philips Electronics N.V. (applicant for all designated contracting states) and Philips Norden AB (applicant for Sweden only) have to be regarded as joint applicants in relation to all designated contracting states. This follows from Article 118 EPC, which states explicitly that, where the applicants for different contracting states are not the same, they shall be regarded as joint applicants for the purposes of proceedings before the EPO.

**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:

D. Sauter

F. Edlinger