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Datasheet for the decision
of 17 July 2007

Case Number: T 0174/06 - 3.5.03

Application Number: 96200353.9

Publication Number: 0727880

IPC: E05B 49/00

Language of the proceedings: EN

Title of invention:
Improved remote control system, for transmitting coded signals,
provided with a service transmitter able to selflearn codes
from other transmitters

Patentee:
NICE SpA

Opponent:
Hörmann KG Antriebstechnik

Headword:
Remote control system/NICE SpA

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
"Added subject-matter - main and auxiliary requests (yes)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0174/06 **-** 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 17 July 2007

Appellant: NICE SpA
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Decision under appeal: **Decision of the opposition division of the**
                               European Patent Office posted 6 December 2005
                               revoking European patent No. 0727880 pursuant
                               to Article 102(1) EPC.

Composition of the Board:

Chairman: R. Menapace
Members: F. van der Voort
                 A. J. Madenach

Summary of Facts and Submissions

I.   This appeal is against the decision of the opposition
        division revoking European patent No. 0 727 880.

II.   The proprietor (appellant) lodged an appeal against this
        decision and requested that the decision be set aside
        and the patent be maintained on the basis of claims of
        either a main or an auxiliary request, both requests as
        filed with the statement of grounds of appeal. In
        relation to the last feature ("in case of a contractor
        combination ...") of claim 1 of each of these requests,
        the appellant referred to the flow diagram of Fig. 11
        and the corresponding passage in the description as
        providing a basis for this feature. Oral proceedings
        were conditionally requested.

III.   In response to the statement of grounds of appeal, the
        respondent (opponent) filed a reply and requested that
        the appeal be dismissed. Oral proceedings were
        conditionally requested. The respondent argued, *inter
        alia*, that the features of claim 1 of both requests were
        more general than as disclosed by the application as
        filed. In particular, the features according to the last
        paragraph of claim 1 were more general than as shown in
        the above-mentioned flow diagram. Hence, claim 1
        violated Article 123(2) EPC.

IV.   The parties were summoned by the board to oral
        proceedings. In a communication accompanying the summons
        the board drew attention to issues to be discussed at
        the oral proceedings, including the question of whether
        the amendments made to the claims as granted complied
        with the requirements of Article 123(2) EPC.

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V.   In preparation for the oral proceedings the appellant
       filed with a letter received on 21 June 2007 a revised
       claim 1 of a main request and of five auxiliary requests,
       which replaced all previous requests.

VI.   Oral proceedings were held on 17 July 2007. The
       appellant requested that the decision be set aside and
       the patent be maintained on the basis of one of the six
       sets of claims filed on 21 June 2007 in the indicated
       order of preference, a description still to be adapted
       and the drawings as granted. The respondent requested
       that the appeal be dismissed. At the end of the oral
       proceedings the board's decision was announced.

VII.   Claim 1 of the main request reads as follows:

       "Remote control system comprising:
       - a remote control receiver (18) provided with a non-
       volatile memory, and
       - a service device (30) comprising:
           - a microprocessor (38),
           - a transmission unit (54),
           - a broad band and low gain receiver (46) able to
           receive coded radio signals and to detect their codes,
           - a non-volatile memory (42) able to store a code
           detected by the device receiver (46),
           - a push button assembly (32, 33) able to send
           control signals to the microprocessor (38) for giving
           directions relating to
                 - code reception by the device receiver (46),
                 - code record into the device memory (42),
                 - code deletion from the device memory (42) of
                 preceding no more useful codes, and

- reading of codes stored into the device memory
(42) for their sending with a remote control
signal to the transmission unit (54) in order to
forward them as new codes to be stored into the
non-volatile memory of the remote control
receiver (18) or in order to transmit them as
codes recognizable by the receiver (18),

CHARACTERIZED IN THAT
the microprocessor (38) is adapted to perform:
an operation (140) of keyboard checking for a digit
combination on said push button assembly (32, 33), and a
decision step (142) of valid digit combination from
which an access combination or a contractor combination
is detected, said decision step (142) prosecuting
- in case of an access combination, to a program portion
able to manage the transmission of codes recognizable by
the receiver (18),
- in case of a contractor combination, to a program
portion able to manage the code reception by the device
receiver (46), code record into the device memory (42)
and code deletion from the device memory (42) of
preceding no more useful codes, reading of codes stored
into the device memory (42) for their sending with a
remote control signal to the transmission unit (54) in
order to forward them as new codes to be stored into the
non-volatile memory of the remote control receiver
(18)."

Claim 1 of the first auxiliary request is identical to
claim 1 of the main request, except for the term "a push
button assembly (32, 33)" in the preamble being replaced
by "a keyboard (32, 33)".

Claim 1 of the second auxiliary request is identical to

claim 1 of the first auxiliary request, except for the
passage "or in order to transmit them as codes
recognizable by the receiver (18)" in the preamble being
deleted.

Claim 1 of the third auxiliary request reads as follows:

"Remote control system for gates and/or barriers
comprising:
- a remote control receiver (18) provided with a non-
volatile memory, and
- a service device (30) comprising:
    - a microprocessor (38),
    - a transmission unit (54),
    - a broad band and low gain receiver (46) able to
    receive coded radio signals and to detect their codes,
    - a non-volatile memory (42) able to store a code
    detected by the device receiver (46),
    - a keyboard (32, 33) able to send control signals to
    the microprocessor (38) for giving directions
    relating to
        - code reception by the device receiver (46),
        - code record into the device memory (42),
        - code deletion from the device memory (42) of
        preceding no more useful codes, and
        - reading of codes stored into the device memory
        (42) for their sending with a remote control
        signal to the transmission unit (54) in order to
        forward them as new codes to be stored into the
        non-volatile memory of the remote control
        receiver (18),
CHARACTERIZED IN THAT
the microprocessor (38) is adapted to perform:
an operation (140) of keyboard checking for a digit

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combination on said push button assembly (32, 33),
and a decision step (142) of valid digit combination
from which an access combination, i.e. a combination by
which one of the barrier opening or closing keys has to
be actuated, or a contractor combination, i.e. a digit
combination serving to the personnel of the installation
and maintenance service to be recognized, is detected,
said decision step (142) prosecuting
- in case of an access combination, to a decision step
checking whether the digit combination corresponds to
the opening and closing keys and, if so, to an operation
step for the transmission of codes recognizable by the
receiver (18);
- in case of a contractor combination, to a program
portion able to manage the code reception by the device
receiver (46), code record into the device memory (42)
and code deletion from the device memory (42) of
preceding no more useful codes, reading of codes stored
into the device memory (42) for their sending with a
remote control signal to the transmission unit (54) in
order to forward them as new codes to be stored into the
non-volatile memory of the remote control receiver
(18)."

Claim 1 of the fourth auxiliary request is identical to
claim 1 of the third auxiliary request, except for the
addition of the following feature in the last paragraph
after "remote control receiver (18)":

", the change of the contractor combination, the change
of the combination for a gate opening key, the change of
the combination for the gate closing key, the recording
of a radio signal for the gate opening key and the
recording of a radio signal for the gate closing key,

the deletion of a radio signal for the gate opening key, and the deletion of a radio signal for the gate closing key."

Claim 1 of the fifth auxiliary request is identical to claim 1 of the fourth auxiliary request, except for the addition of the following feature in the characterizing portion before "the microprocessor (38)":

"the service device (30) is adapted to effect:
- firstly an operation step (130) for deactuation of all the inputs of the microprocessor,
- then an operation step (132) for inhibiting the power supply of the peripheral units of the microprocessor,
- then an operation step (134) for resetting the microprocessor,
- then an operation step (136) for turning-on illumination of the of the *[sic]* keyboard (32), the non-volatile memory (42) and the receiver (54), and
- and a decision step (142) to see if a 5 second time is expired;
and in that"

Reasons for the Decision

1.   *Amendments - Article 123(2) EPC*

1.1   Claim 1 of each of the requests includes the feature that the microprocessor is adapted to perform a decision step which, in case of a contractor combination, is prosecuted by a program portion able to manage:
-        the code reception by the device receiver (46);
-        code record into the device memory (42);

-       code deletion from the device memory (42) of
preceding no more useful codes;
-       reading of codes stored into the device memory
(42) for their sending with a remote control signal to
the transmission unit (54) in order to forward them as
new codes to be stored into the non-volatile memory of
the remote control receiver (18).

1.2   The appellant argued that this feature was based on the
        application as originally filed for the following
        reasons:

        The feature in question expressed in words what was
        shown in the program flow-chart of Figs. 10 and 11, it
        being clear to the skilled reader that those steps which
        were shown in the flow-chart but were not referred to in
        the claim, for example steps 130 to 138, were not
        essential to the technical problem underlying the
        present invention as set out in col. 1, lines 31 to 59,
        of the application as published. Further, the detection
        of an invalid digit combination as shown in Fig. 10 at
        step 142 was implicitly included in the claim, since the
        claim specified that the microprocessor was adapted to
        perform a "decision step (142) of valid digit
        combination from which an access combination or a
        contractor combination is detected", which implied that
        an invalid digit combination would also be detected.
        Furthermore, it was clear to the skilled reader that the
        steps of "code record" and "code deletion" corresponded
        to the steps "radio signal record" and "radio signal
        delete" in Fig. 11.

        The appellant further argued that the feature in
        question was based on claim 1 as originally filed and

was again included in the preamble of present claim 1.
Even though in the characterizing portion the feature
was referred to in the context of a detection of a
contractor code, it was clear from the application as
filed that an accession combination would only have
permitted remote control operations of the access
barrier by actuating one of the barrier opening and
closing keys, see col. 9, lines 7 to 10 of the
application as published, and that, consequently, it was
"implicit by exclusion" that all other operations would
require the detection of a contractor combination as
referred to in present claim 1.

1.3   The respondent argued that prior art documents on file
       showed that code recording could also be carried out
       without it being necessary that a contractor code had
       been entered. Further, referring to col. 8, lines 33 to
       35 of the application as published, Figs. 10 and 11 only
       related to the operation of the service device.
       Consequently, the flow-chart did not provide a basis for
       the reading of codes stored into the device memory for
       their sending with a remote control signal to the
       transmission unit in order to forward them as new codes
       to be stored into the non-volatile memory of the remote
       control receiver, since this involved the storage of
       codes at the remote control receiver, which is however
       not part of the service device.

1.4   For the reasons set out below, the board is of the view
       that the above-mentioned feature (see point 1.1) is not
       originally disclosed.

1.4.1 The description as originally filed refers to a
       contractor combination only in the passages relating to

Figs. 10 and 11, i.e. col. 8, line 32 to col. 9, line 57
of the application as published. As shown in Fig. 10, if,
at step 142, it is determined that a contractor
combination has been entered, the procedure continues at
"A" to a decision step 160 (see Fig. 11) in which it is
decided which one of eight operations, numbered 1 to 8,
will subsequently be executed. Four of these operations,
i.e. operations 4 to 7 which correspond to steps 168,
170, 172 and 174, respectively, arguably relate to the
storage of a code received with the radio signal and to
the deletion from the service device memory of such a
code (see also col. 3, lines 55 to 58, of the
application as published). However, present claim 1 does
not include all of the operations which can be executed
after a contractor combination has been entered as shown
in Fig. 11. In particular, the operations relating to
the replacement of the combination for the gate opening
or closing key (steps 162 and 164) and to the
replacement of the contractor combination (step 166)
have been omitted in claim 1 of the main request and of
the first to third auxiliary requests. Claim 1 of these
requests therefore defines the program portion concerned
in more general terms than as disclosed with reference
to Fig. 11.

Conversely, present claim 1 of each request defines
additional operations which the program portion is able
to manage in case of a contractor combination, which,
however, are not shown in Fig. 11, namely the code
reception by the device receiver and the reading of
codes from the device memory in order to forward them to
the remote control receiver.

Further, the board notes that claim 1 of both the fourth

and the fifth request does include the operations
corresponding to the steps 162, 164, 166, 168, 170, 172
and 174 of Fig. 11. However, these steps are defined in
addition to the code recording and code deletion, which
then have no counterpart in Fig. 11.

1.4.2 Neither is a basis for the above-mentioned amendments to
claim 1 of each of the requests apparent from other
parts of the application documents as originally filed.

The appellant's argument that the feature in question is
based on claim 1 as filed is not convincing, since in
claim 1 as filed the code reception, code recording,
code deletion and the reading of codes were referred to
only as part of a definition of a push button assembly,
namely that the push button assembly must be able to
send the corresponding control signals, and were not
referred to in relation to a program portion which is
able to manage these operations in case of a contractor
combination being detected, as in present claim 1.

1.4.3 The appellant's argument that a contractor combination
is always required in order to carry out an operation
other than the opening or closing of the barrier is not
convincing either, since the application itself suggests
that some of the operations in which the content of the
service device memory is modified can be carried out
without it being necessary that a contractor combination
is entered. In particular, at col. 6, lines 10 to 19, of
the application as published it reads:

"A contact pair 77, connected from pin L6 of the
microprocessor 38 to an input Ck of the EEPROM memory 42,
and manually actuable, allows a complete resetting of

the memory 42 on demand of the contractor, for example
for proceding *[sic]* to a replacement of all the codes
inserted into the memory 42. Of course, the manual push
button for actuating the contact pair 77 does not have
to be accessible by the usual user of the service device
10, but just by the contractor to avoid misuse and
control mistakes."

and at col. 7, lines 5 to 10, it reads:

"In addition, to allow the record of the codes to be
selflearned *[sic]*, a jumper 65, connected inside the
device and actuable by just a contractor, connects to
ground the port L4 just for the time necessary to the
record of the code to be selflearned into one of the
EEPROMs 42a or 42b."

In the board's view, the accessibility of the manual
push button and/or the jumper would not have been an
issue in relation to misuse by persons other than the
contractor if the entering of a contractor combination
would in any case have been required.

1.5   The board concludes that, due to the presence of the
above-mentioned feature (see point 1.1 above) in claim 1
of each of the requests, claim 1 of each of these
requests defines a combination of features which is not
directly and unambiguously derivable from the content of
the application as filed, contrary to Article 123(2) EPC.

1.6 For the above reasons, none of the requests is allowable.

2.   There being no allowable request, it follows that the
appeal must be dismissed.

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Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano   R. Menapace

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