

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 28 March 2012**

Case Number: T 0726/08 - 3.5.04

Application Number: 02251723.9

Publication Number: 1248257

IPC: G11B20/10, G11B27/36,
G11B27/00, G11B19/02

Language of the proceedings: EN

Title of invention:

Apparatus and method for information record and playback, and
program record medium recording information record and
playback procedure program

Applicant:

Pioneer Corporation

Headword:

Relevant legal provisions:

EPC 1973 Art. 84

Keyword:

Clarity of claims (both requests - no)

Decisions cited:

Catchword:



Case Number: T0726/08 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 28 March 2012

Appellant: Pioneer Corporation
(Applicant) 1-1, Shin-ogura
Saiwai-ku
Kawasaki-shi
Kanagawa 212-0031 (JP)

Representative: Haley, Stephen
Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (UK)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 13 September 2007
refusing European patent application No.
02251723.9 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: F. Edlinger
Members: R. Gerdes
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 02 251 723.9 posted on 13 September 2007.
- II. The decision under appeal was based on the ground that the subject-matter of the claims according to the applicant's main request extended beyond the content of the application as filed (Article 123(2) EPC 1973). The examining division also found that claim 1 according to all requests lacked clarity (Article 84 EPC 1973). The subject-matter of the independent claims of these requests was also held to lack an inventive step in view of document D1 in combination with D2 (Article 56 EPC 1973):
- D1: WO 99/64969 A2 and
D2: WO 99/33265 A1.
- III. Together with the statement setting out the grounds of appeal the appellant submitted a replacement set of claims according to a sole request. The appellant declared its intention to amend the description to conform with the amended claims, as necessary.
- IV. In a communication annexed to the summons to oral proceedings the board *inter alia* expressed doubts that the subject-matter of claim 1 of the request then on file was clear (Article 84 EPC 1973).
- V. By letter of 23 February 2012 the appellant maintained the request filed with the statement of grounds of appeal as its main request and at the same time submitted a further set of claims according to an auxiliary request.

VI. Oral proceedings were held on 28 March 2012. At the end of the oral proceedings the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request filed with the statement of grounds of appeal and, in the alternative, on the basis of the claims of the auxiliary request filed with letter of 23 February 2012.

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

"An information record and playback apparatus for playing back program information recorded on a first record medium and recording the played-back program information on a second record medium, the information record and playback apparatus comprising:
first playback means for playing back the program information recorded on the first record medium;
record means for recording the program information played back by the first playback means on the second record medium; and
second playback means for playing back the program information recorded on the second record medium,
characterised by:
control means for controlling the apparatus so as to record the program information on the second record medium at a first speed higher than a normal playback speed of the program information from the first record medium, and so as to playback the program information recorded on the second record medium at the normal playback speed, wherein
the control means enables a user to operate playback operation means for the program information which has been recorded on the second medium while the program information is being recorded at the first speed."

VIII. Claim 1 of the auxiliary request has the same wording as claim 1 of the main request except for its last feature starting from "the control means ...", which is phrased as follows:

"... the control means is operable to playback the program information which has been recorded on the second medium while the program information is being recorded at the first speed."

IX. The appellant's arguments with respect to clarity of the subject-matter of claim 1 of the main request may be summarised as follows:

With respect to the last feature of claim 1 the appellant argued that it would be clear to the skilled person that the control means enables the playback operation to occur at the same time that the program information is being recorded. The simultaneity is expressed by the word "while".

The skilled person would understand that the "first speed higher than a normal playback speed" for recording on the second record medium is an average speed. However, even if claim 1 were interpreted to encompass reading from the first playback means at normal playback speed, this would not render claim 1 unclear. The essence of the invention is to enable a user, during the playback and record operation, to perform playback operations from the second record medium seamlessly, as if a record operation was not being conducted (see page 3, line 18 to page 4, line 2 of the description).

X. As regards the auxiliary request the appellant stated that the amendment to the last feature of claim 1 was

intended to make it clear that the operation of playing back from the second record medium occurs simultaneously with the recording on that medium.

The arguments with respect to the interpretation of "the first speed" as an average speed regarding claim 1 of the main request applied likewise to claim 1 of the auxiliary request.

Reasons for the Decision

1. The appeal is admissible.
2. The board notes that the applicant had filed some replacement pages for the description in the first-instance proceedings. In the following the board refers to the description as originally filed, which was also used in the oral proceedings. If not otherwise stated, the text of the relevant passages is identical to those of the replacement pages.
3. *Main request*
 - 3.1 According to Article 84 EPC 1973, the claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.
 - 3.2 Claim 1 specifies in its last feature that "the control means enables a user to operate playback operation means ... while the program information is being recorded at the first speed".
 - 3.2.1 The technical problem is presented in the application as being "to provide an information record and playback

apparatus ... for enabling the user, etc., to perform operation of track specification, etc., and being capable of performing the operation responsive to the operation of the user, etc., even while program information played back from a record medium ... is being recorded on a record medium ..." (see page 3, line 18 to page 4, line 2). The solution to this problem involves simultaneous recording on and playback from the second record medium. Enabling playback from the second medium responsive to user operation while continuing to record on that medium (without waiting for the high-speed record operation to complete) is also consistently presented in the description as being the technical effect of the invention (see page 5, lines 15 to 20 and page 27, lines 16 to 21).

3.2.2 The last feature of claim 1 refers only to simultaneity of operation of the playback operation means and high-speed recording ("while the program information is being recorded at the first speed" on the second record medium). In particular, the wording of claim 1 can be interpreted such that the control means is allowed to postpone the actual playback until the high-speed record process is complete (see points 2.1 to 2.3 of the decision under appeal). Such an interpretation leads to ambiguities concerning the simultaneity of the recording and playback processes and inconsistencies with the description.

3.2.3 The appellant's argument that the word 'while' implies simultaneity is not contested. However, according to the wording of the last feature in claim 1 this simultaneity only applies to enabling the user to operate the playback operation means and recording at the first speed.

3.2.4 Hence, the board agrees with the reasoning in the decision under appeal that claim 1 does not clearly define the invention in respect of the operation of the control means in the last feature of claim 1.

3.3 In addition to this ambiguity concerning the user-operated playback operation during recording, claim 1 contains no specification of the playback speed of the first record medium during the recording process on the second medium. The board, even taking account of the general teaching in the description, cannot derive from the wording of claim 1 an implicit limitation in the sense of the playback of program information from the first record medium (for instance a CD-player) being carried out at a higher than normal playback speed.

3.3.1 The present application contains no detailed information on how the read/write accesses to the second record medium are coordinated to enable user-operated playback from the second record medium while recording continues on that medium. Normally, simultaneous reading/writing in this sense requires a time-sharing operation, with reading and writing operations being executed blockwise in an alternating fashion. Such alternating operations involving the use of buffers to decouple read/write accesses to the medium from those to the buffer's interface are well known from time-shift recordings and are shown, for example, in D2, figure 3. It can, therefore, be assumed that read/write accesses to the second record medium are performed according to the same principle in the present application.

3.3.2 Since according to claim 1 the recorded program information is played back from the second record medium at the normal playback speed, alternate reading

from and writing to the same medium require data block transfers at a higher than normal playback speed. Otherwise there would be no time for writing to the medium if the data blocks were read out at a continuous normal playback speed. However, recording at a first speed higher than a normal playback speed does not necessarily mean that the program information is played back from the first record medium at a higher than normal playback speed. Since the read data have to be processed (decoding, converting, etc.; see figure 1) reading and writing are decoupled and need some buffering. Playing back the program information from the first record means could thus take place at the normal playback speed (for instance of a CD-player) and recording of data blocks on the second record medium would be controlled at the first speed as explained above, which would allow for the simultaneous reading/writing access to the second record means. For these reasons and because the speeds are compared to each other, it is important to distinguish whether the expressions "first speed" and "normal playback speed" (which is the speed at which the program information is normally played back from the first record medium) refer to an average speed or the data transfer speed.

- 3.3.3 The description of the embodiment consistently refers to high speed playback from the first record medium. The advantages of the invention, such as short time recording and different user operations, for instance track specification and playback, before the recording is complete, are associated with "high speed" playback (see page 19, lines 3 to 5; page 21, lines 11 to 15 and page 29, lines 9 to 15). Playback from an optical disk as an example of a first record medium is associated with a higher rotation speed of the optical drive's

spindle, the playback speed being "n times the rotation speed applied for playing back at the normal playback speed (n is a natural number **greater than 1**)", see page 17, lines 13 to 23, emphasis added by the board.

3.3.4 There is no disclosure in the application as to how the playback from the first record medium and the recording on (and playback from) the second record medium would have to be coordinated in order to achieve at least similar technical effects without a higher than normal playback speed. It is, hence, unclear what limitations regarding the playback speed from the first record medium result from the specification of the control at a "first speed" as specified in claim 1.

3.4 It follows from the above that claim 1 does not meet the requirements of Article 84 EPC 1973.

4. *Auxiliary request*

4.1 Claim 1 of the auxiliary request was not amended with respect to claim 1 of the main request as far as the specification of recording and playback speeds is concerned. Hence, the reasoning under section 3.3 above applies likewise with respect to claim 1 of the auxiliary request. The appellant did not submit any additional arguments in this respect.

4.2 Consequently, the subject-matter of claim 1 of the auxiliary request does not meet the requirements of Article 84 EPC 1973.

5. Since neither of the appellant's requests is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated