BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

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

Datasheet for the decision of 14 July 2010

Case Number: T 1051/08 - 3.5.03

Application Number: 93119152.2

Publication Number: 0602438

IPC: H04H 1/00

Language of the proceedings: EN

Title of invention:
RDS broadcast receiver

Patentee:
CLARION Co., Ltd.

Opponent:
IGR GmbH & Co. KG

Headword:
RDS broadcast receiver II/CLARION

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step (main and auxiliary request) - no"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1051/08 **-** 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 14 July 2010

Appellant: (Opponent)
IGR GmbH & Co. KG
Bahnstrasse 62
D-40210 Düsseldorf (DE)

Representative:
Eichstädt, Alfred
Maryniok & Eichstädt
Kuhbergstrasse 23
D-96317 Kronach (DE)

Respondent: (Patent Proprietor)
CLARION Co., Ltd.
5-35-2, Hakusan
Bunkyo-ku
Tokyo (JP)

Representative:
Schuhmann, Albrecht
c/o Merten & Pfeffer Patentmanagement
Allersbergerstr. 185 / G-3
D-90461 Nürnberg (DE)

Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 26 March 2008 concerning maintenance of European patent No. 0602438 in amended form.**

Composition of the Board:

Chairman: A. S. Clelland
Members: B. Noll
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. This is the second appeal in the opposition proceedings concerning European patent No. 0 602 438. The first appeal (T 1122/03) was filed by the patent proprietor and the present board, in a different composition, concluded that the subject-matter of claim 1 as granted did not involve an inventive step having regard to the disclosure of

D7: Bedienungsanleitung des Grundig Autoradios WKC 3851, Grundig AG, Fürth, and

D8: "Guidelines for the implementation of the RDS System", Tech 3260-E, European Broadcasting Union, Geneva, January 1990,

D8 being considered as illustrating the common general knowledge of the person skilled in the art.

The board decided to remit the case to the department of first instance for further prosecution on the basis of an auxiliary request 3, for the reason that this request introduced an aspect to the claimed subject-matter which was not discussed in the opposition procedure.

II. In the subsequent opposition proceedings the patent proprietor filed additional sets of claims of further auxiliary requests. In an interlocutory decision of the opposition division posted 26 March 2008 it was decided that claim 1 on the basis of which the case had been remitted by the board lacked an inventive step and that the patent, taking into account amendments according to an auxiliary request 2 filed during the oral

proceedings before the opposition division on 28 February 2008, met the requirements of the EPC.

III. Claim 1 according to auxiliary request 2 filed on 28 February 2008 reads as follows:

"An RDS receiver (100) having a plurality of keys including an RDS key (10), comprising:
means for receiving broadcast transmission signals;
said means for receiving including means for deriving a first audio signal from said broadcast transmission signals;
means (2) for determining a broadcast category of a broadcast signal;
controller (3) means including means for storing a desired category item;
said controller (3) means including means for activating an interrupt mode;
means for deriving a second audio signal from said broadcast signals;
characterised in that:
said controller (3) means having means for activating a selection mode of said storing means when said RDS key (10) is actuated for a specified interval;
said controller (3) means including means for outputting said second audio signal when said first audio signal does not match the desired category item;
said means for outputting said second audio signal being activated when said interrupt mode is inactive; and
said controller (3) means including means for outputting said first audio signal when said

interrupt mode is activated and a desired category item, stored in said controller means, matches the category of a broadcast transmission signal received,
said controller means including means for confirming the receivability of said second audio signal after the category of said first audio signal changes;
and said controller means including means for subsequently tuning said means for receiving to receive said second audio signal when said receivability is confirmed,
wherein said means for confirming comprises means for reading the PI code of the second audio signal whereby said receivability is confirmed if the said PI [sic] can be read".

IV. This present appeal was filed by the opponent against the interlocutory decision of the opposition division.

V. In a communication posted 3 June 2009 the board gave a preliminary opinion on the case. In particular, the board noted at point 5 of the communication that from the submissions of the parties it appeared that the discussion on inventive step as regards the subject-matter claimed in claim 1 should concentrate in particular on the contribution of the last feature "wherein said means for confirming comprises means for reading the PI code of the second audio signal whereby said receivability is confirmed if the said PI can be read".

VI. In a response to the board's communication the respondent (patent proprietor) on 6 October 2009

proposed an amended wording of the last feature of claim 1 which reads "wherein said means for confirming comprises means for checking whether the PI code of the second audio signal can be read whereby said receivability is confirmed if said PI code can be read".

VII. Oral proceedings before the board were held on 14 July 2010. In the course of the oral proceedings the respondent filed a set of claims as an auxiliary request in which the last feature of claim 1 was amended according to the wording included in the respondent's letter received on 6 October 2009.

The appellant requested that the impugned decision be set aside and that the patent be revoked.

The respondent requested, as a main request, that the appeal be dismissed, i.e. the patent be maintained on the basis of the claims filed as auxiliary request 2 on 28 February 2008, or, as an auxiliary request, that the patent be maintained in amended form on the basis of the claims filed during the oral proceedings.

At the end of the oral proceedings the board's decision was announced.

Reasons for the decision

1. *The main request*

1.1 The invention according to claim 1 of the main request relates to a RDS (radio data system) broadcast receiver. In normal operation, defined in claim 1 as being when

an "interrupt mode is inactive", the receiver outputs a radio program which is referred to in claim 1 as the "second audio signal". By actuating the RDS key, the receiver is brought into a so-called "selection mode" in which the user may select a radio program category. Examples of program categories are given at column 4, lines 25ff. of the patent specification. This passage also illustrates that a category of a program is expressed as a particular value of the program type or "PTY" code contained in the RDS Signal accompanying the program. Upon activation of the "interrupt mode" mentioned above, and if the "second audio signal" does not contain a PTY code which matches the selected program category, the receiver tunes to another radio program, referred to in claim 1 as the "first audio signal", the RDS signal of which contains a PTY code which matches the selected program category. The question of how the skilled person would understand the invention as claimed was discussed by the board in its earlier decision T 1122/03 (see points 2.1 to 2.3 of the reasons).

1.2 The invention as outlined at point 1.1 above corresponds to the receiver as set out in claim 1 as granted, which was found in decision T 1122/03 to lack an inventive step having regard to the disclosure of D7 and the general background knowledge represented by D8 (cf. points 2.7 to 2.13 of the reasons).

1.3 Claim 1 of the present main request additionally includes three features, i.e. the controller including (a) means for confirming the receivability of said second audio signal after the category of said first audio signal changes and (b) means for subsequently

tuning said means for receiving to receive said second audio signal when said receivability is confirmed; and (c) the means for confirming comprising means for reading the PI code of the second audio signal whereby said receivability is confirmed if the said PI (code) can be read. These features specify the operation of the receiver after the "interrupt mode" has been terminated as a result of the "first audio signal" having stopped broadcasting a program of the category previously selected by the user.

The three additional features address the specific problem of how to handle the return of the receiver to the "second audio signal" after the "interrupt mode" has been terminated.

1.4 In the board's view the person skilled in the art would expect the receiver to revert to the frequency at which the "second audio signal" had been received before the "interrupt mode" was activated. In order to be sure that the "second audio signal" could be received at this frequency, rather than another program, the skilled person could be expected to make use of the properties of the RDS system as illustrated in D8 (cf. the first paragraph at page 46) to check whether the PI code of the "second audio signal" was correct. Thus, the skilled person would be led by the properties of the RDS system to configure the receiver such that it first confirms, according to features (a) and (c) mentioned above, the receivability of the "second audio signal" at the previously received frequency by checking the PI code, and then, according to feature (b), tunes to this frequency if the receivability of the "second audio signal" is confirmed. Thus, the

skilled person would arrive at the subject-matter of claim 1 without the exercise of inventive skill (Article 56 EPC).

1.5 The respondent argued that the manner in which the receivability of the "second audio signal" was confirmed according to the invention did not necessitate any comparison between the received PI code and that of the "second audio signal" previously received. The invention relied on the assumption that if a valid PI code could be read at this frequency the program received at this frequency would be the "second audio signal", and it would be received at an acceptable quality. A PI code was judged as valid if a digital signal was present in the portion of the RDS data block transporting the PI code. The invention would thus render obsolete any separate signal strength detection for determining the quality of the received signal and would therefore reduce the time for channel switching.

1.6 The board notes that the patent specification itself states at column 6, lines 12 to 14 that "the PI code can be read (confirmed)" but does not further elucidate any specific technical meaning of this expression. Thus, it cannot be concluded that the expression "the PI code can be read" inherently excludes a comparison of the received PI code with the PI code of the "second audio signal" previously received, as is implicit in D8. Nor is there any indication in the patent specification that this is to be understood as merely requiring a check on the presence of a digital signal in the PI code portion of a RDS block. Furthermore, the board cannot find any indication in the patent specification

that the receiver according to the invention dispenses with signal strength detection as an indication of the signal quality. There is further no suggestion in the patent specification that the switching time could be reduced by only "reading" (in the above sense) the PI code from the received signal. Rather, it appears from the flowcharts shown in figures 6 to 8 and the associated description that the receiver always attempts to tune to a frequency at which the "second audio signal" is broadcast, and that the PI code of the "second audio signal" is used to confirm its receivability. Hence, the board concludes that the expression "the PI code can be read (confirmed)" is to be understood as meaning that the PI code detected in the received signal is compared with the PI code stored from the "second audio signal" previously received.

Hence, the board is not convinced by the respondent's arguments.

1.7 In conclusion, the receiver according to claim 1 of the main request does not involve an inventive step (Article 56 EPC).

2. *The auxiliary request*

2.1 The amendment introduced in claim 1 of the auxiliary request aims at expressing more clearly the respondent's interpretation of the term "the PI code can be read", namely checking the readability of the PI code, by implication without comparing it with the PI code of the "second audio signal" previously received. However, the board does not consider that such an interpretation is directly and unambiguously derivable

from the cited passage at column 6, lines 12-14 (cf. point 1.6 above). Hence, in the board's view the amendment made in claim 1 of the auxiliary request is, when interpreted in the light of the description, merely linguistic and does not further limit the claimed receiver. Thus, the receiver according to claim 1 of the auxiliary request does not involve an inventive step (Article 56 EPC) for the same reasons as for claim 1 of the main request.

3. Since neither of the respondent's requests is allowable the patent must be revoked.

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. Magliano A. S. Clelland