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**Datasheet for the decision
of 5 December 2012**

Case Number: T 0726/09 - 3.5.04

Application Number: 99301998.3

Publication Number: 944086

IPC: G11B27/031, H04N7/50

Language of the proceedings: EN

Title of invention:

Data recording method and data recording system

Applicant:

PIONEER ELECTRONIC CORPORATION

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Added subject-matter (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0726/09 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 5 December 2012

Appellant: PIONEER ELECTRONIC CORPORATION
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 28 August 2008
refusing European patent application No.
99301998.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. Edlinger
Members: M. Paci
C. Vallet

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 99 301 998.3, published as EP 0 944 086 A2.
- II. The application was refused on the ground that the subject-matter of claim 1 did not involve an inventive step in view of D1 (EP 0 712 247 A2) and common general knowledge (Article 56 EPC 1973).
- III. With the statement of grounds of appeal the appellant filed amended claims 1 to 8 replacing all claims on file.
- IV. In a communication annexed to the summons to oral proceedings the board expressed *inter alia* the provisional opinion that claim 1 filed with the statement of grounds of appeal did not meet the requirements of Articles 84 EPC 1973 and 123(2) EPC.
- V. By telefax dated 26 November 2012, the appellant informed the board that the application was "being allowed to lapse" and that the appellant would not be represented at the oral proceedings.
- VI. The board held oral proceedings on 5 December 2012. At the end of the oral proceedings the decision was announced.
- VII. The appellant's final requests are that the decision under appeal be set aside and that a patent be granted on the basis of the claims filed with the statement of grounds of appeal.

VIII. Independent claim 1 according to the **sole request** reads as follows:

"A data recording method comprising the processes of: receiving multiplexed data (1) including a plurality of programs (D1, D2, D3) at a predetermined first bit rate from an external source; extracting at least one program (D1) out of the programs (D1, D2, D3) included in the received multiplexed data (1); and recording the extracted at least one program (D1) at a predetermined second bit rate in order to be reproduced by a reproducing apparatus at the predetermined second bit rate, wherein each of programs (D1, D2, D3) is divided into a plurality of packets (P1, P2, P3) each having a fixed length L, the programs (D1, D2, D3) are time-division multiplexed as the multiplexed data (1) by a unit of the packet, a plurality of time preset values (PCR) are arranged in the multiplexed data (1) at predetermined intervals, and each of the time preset values (PCR) indicates a passing of time while the multiplexed data (1) is sequentially sent from the external source, wherein the extracting process comprises:

extracting the packets (P1) comprising the at least one program (D1) to be extracted from the multiplexed data (1);

identifying the time preset values (PCR) included in the extracted packets (P1);

generating a plurality of new time preset values (PCR) by using the identified time preset values (PCR) and the predetermined second bit rate, each of the new time preset values (PCR) indicating a passing of time while the extracted at least one program (D1) is sequentially recorded at the predetermined second bit rate in the recording process; and

replacing the time preset values (PCR) included in the extracted packets by the generated new time preset values (PCR),

wherein the second bit rate is lower than the first bit rate, characterized in that the generating process comprises the processes of, when no time preset value (PCR) has been identified in the extracted packet or when a PCR is identified but is not equal to the PCR at T0:

counting the number N of the extracted packets (P1) during a period of time since T0 when a previous time preset value (PCR) is identified in the identifying process until T when the current time preset value (PCR) is identified in the identifying processes; and calculating a new time T by using an equation:

$$T=(N \times L/R) + T0$$

where the R is the predetermined second bit rate and the T0 is a time when the previous time preset value (PCR) is identified in the identifying process and calculating the new time preset value corresponding to the calculated new time T."

Claims 2 to 8 have no bearing on the present decision.

- IX. In the communication annexed to the summons to oral proceedings, the board informed the appellant that although the decision under appeal was based solely on the ground of lack of inventive step, the board had the power to examine *ex officio* whether the application also met other requirements of the EPC (see decision G 10/93, OJ EPO 1995, 172, Order of the decision). The board then raised specific objections under Article 84 EPC 1973 and Article 123(2) EPC, and made observations as to inventive step.

- X. The appellant submitted arguments as to the ground for refusal (inventive step) in the statement of grounds of appeal but did not reply in substance to the objections under Article 84 EPC 1973 and Article 123(2) EPC raised by the board in its communication annexed to the summons to oral proceedings (see point V above).

Reasons for the Decision

1. The appeal is admissible.

Procedural matters

2. Although the decision under appeal is based solely on the ground of lack of inventive step, the board has the power to examine *ex officio* whether the application also meets other requirements of the EPC (see decision G 10/93, OJ EPO 1995, 172, Order of the decision).

Added subject-matter - Article 123(2) EPC

3. The characterising portion of claim 1 has been amended in such a way that claim 1 contains subject-matter extending beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC, for the reasons given below.

The phrase "when no time preset value (PCR) has been identified in the extracted packet or when a PCR is identified but is not equal to the PCR at T0", preceding the counting and calculating steps, means that the counting and calculating steps are performed when either of these conditions is fulfilled. In other words, it means that the calculating step is performed **each time** a packet is received, even if the received

packet does **not** contain a PCR. However, the application as filed only discloses that the calculating step is performed when a PCR (other than the initial or previous PCR) is detected, not when no PCR is detected (see from page 18, line 10, to page 19, line 20). The feature of claim 1 that the calculating step is performed "when no time preset value (PCR) has been identified in the extracted packet" is thus not directly and unambiguously derivable from the application as filed.

For these reasons, the wording in claim 1 introduces subject-matter extending beyond the content of the application as filed in violation of Article 123(2) EPC.

4. The appellant's arguments

The appellant did not reply to the above objection under Article 123(2) EPC raised by the board in the communication annexed to the summons to oral proceedings.

However, for the sake of completeness, it should be noted that the appellant had submitted, in the statement of grounds of appeal, the argument, relevant to the present objection, that the phrase "when no time preset value (PCR) has been identified in the extracted packet or when a PCR is identified but is not equal to the PCR at T0" was based on page 18, lines 13 to 16 of the application as filed.

The board agrees with the appellant that page 18, lines 13 to 16, and the subsequent text portion from page 18, line 17 to page 19, line 20, disclose that counting and calculating steps are performed "when a PCR is

identified but is not equal to the PCR at T0". However, these passages do not disclose that the calculating step is performed "when no time preset value (PCR) has been identified in the extracted packet". Indeed, when no time preset value (PCR) has been identified in the extracted packet, the application as filed merely discloses that the packet is output as it is (see page 18, lines 10 to 12). There is no mention of a calculating step in such a case.

Conclusions

5. For the above reasons, claim 1 at least does not meet the requirements of Article 123(2) EPC.

Accordingly, the appellant's request is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated