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**Datasheet for the decision
of 22 March 2012**

Case Number: T 1111/09 - 3.5.03

Application Number: 00115773.4

Publication Number: 1071298

IPC: H04Q 7/32

Language of the proceedings: EN

Title of invention:
Mobile telephone set

Applicant:
KYOCERA CORPORATION

Headword:
Mobile telephone set/KYOCERA

Relevant legal provisions:
EPC Art. 54, 111, 114
EPC R. 103(1)(a)

Keyword:
"Novelty - no"
"Reimbursement of the appeal fee - no"

Decisions cited:
J 0037/89, G 0010/93



Case Number: T 1111/09 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 22 March 2012

Appellant:
(Applicant)

KYOCERA CORPORATION
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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 23 December 2008
refusing European patent application
No. 00115773.4 pursuant to Article 97(2) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 00115773.4 on the ground that the subject-matter of claim 1 of a main request lacked an inventive step (Article 56 EPC). An auxiliary request was not admitted into the procedure pursuant to Rule 137(3) EPC (as in force before 1 April 2010).
- II. In the notice of appeal the appellant requested that the decision under appeal be aside.
- III. Together with the statement of grounds a set of new claims was filed. Oral proceedings were conditionally requested.
- IV. In a communication dated 9 March 2011 the board gave a preliminary view on the case, in particular as regards the novelty of the subject-matter of claim 1 (Article 54(2) EPC), having regard to the prior art document
- D4: EP 0511511 A2
- which was introduced into the procedure by the board having regard to its discretion pursuant to Article 114(1) EPC.
- V. With a response to the board's communication received on 16 September 2011, the appellant presented arguments in support of the claims on file.

VIII. Oral proceedings before the board were held on 22 March 2012.

It was requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 - 5 as filed together with the statement of grounds.

Furthermore, in the course of the oral proceedings the appellant requested that the appeal fee be reimbursed.

VI. Claim 1 reads as follows:

"A mobile telephone set (12) comprising:
display means (13) for displaying information including telephone numbers or characters, and
a first address data bus (10) connected to principal integrated circuits such as control means (1) and storage means (2, 3, 8, 9);
characterized in that
a second address data bus (11) is provided for connecting said control means (1) with said display means (13) independently of said first address data bus (10);
wherein said control means (1) controls said first address data bus (10) and said second address data bus (11) independently."

VII. At the end of the oral proceedings the board announced its decision.

Reasons for the decision

Claim 1 - novelty (Article 54(2) EPC)

1. D4 describes a radio receiver controlled by a microprocessor in which the user interface of the radio receiver communicates with the microprocessor via a separate bus. The microprocessor is said to be incorporated within a processor of a prior art radio receiver (column 6, lines 8 to 11) which is said to be mobile (column 1, line 31) and is configured to have a push to talk communication mode. The board is therefore of the view that the D4 radio receiver constitutes a mobile radio telephone set in the terminology of the application. This was not contested by the appellant. In detail, as shown in figure 3 of D4, microprocessor 300 is configured to control the components of the radio receiver, namely the memory components 201, 202, over a first address data bus, i.e. over address and data buses 203, 204. The user interface 117 of the radio receiver includes, inter alia, a LCD as display means (LCD, cf. column 2, lines 11 to 15), and the microprocessor may be instructed by a received signal to display received information to the user (column 8, lines 36 to 39). The board therefore considers it as being implicit that the LCD is suitable for displaying information such as telephone numbers or characters. The user interface 117 is connected to the microprocessor via a second bus 305, 306 which is separate from the buses connecting the microprocessor to the memory components mentioned above. The board concludes that by having the first bus 203, 204 and the second bus 305, 306 separately connected to the

microprocessor it is implicit that each bus is independently controlled by the microprocessor.

The board is therefore of the view that there is no difference in substance between the mobile telephone set as claimed in claim 1 and the radio transceiver of D4. For this reason the telephone set according to claim 1 lacks novelty (Article 54(2) EPC).

2. The appellant argued that the invention was specifically concerned with independently controlling separate buses carrying only address information. This was clear from the expression "address data bus" used throughout the application. Moreover, D4 did not disclose that the separate buses were independently controlled.
3. In the board's view the expression "address data bus" does not serve to effect any functional limitation and in particular cannot serve to distinguish between a bus which solely transmits address data and a bus which may also carry other data. This expression does not therefore distinguish the claimed telephone set from that of D4. As regards independent control of the buses, the board observes that the whole purpose of providing separate buses is to enable independent control; otherwise a single bus could be used. Nor was the appellant able to identify any disclosure in the application which would support the assertion that an independent control of the buses implied a technical distinction from physically separating the buses. A physical separation of buses is, as noted above, known from D4. For these reasons the appellant's arguments must fail.

4. In view of the above the board concludes that the telephone set of claim 1 lacks novelty (Article 54(2) EPC). Claim 1 is therefore not allowable.
5. There being no allowable request on file, the appeal has to be dismissed.

The request for reimbursement of the appeal fee

6. The appellant argued that its appeal was partially successful since the board of appeal did not base its decision on the same document as the examining division. This, in the appellant's view, would amount to an acknowledgement that the appellant was correct in its criticism of the decision and thus it would be equitable to refund the appeal fee.

However, the precondition for reimbursement of the appeal fee pursuant to Rule 103(1)(a) EPC, namely that the appeal be allowable, is not met in the present case. It is clear from the wording and purpose of this provision that "allowable" is to be understood in the sense that the Board of Appeal, in substance at least, "follows" the relief sought by the appellants, in other words that it allows their requests (J 37/89, OJ 1993, 201; Reasons, point 6). In the present case, the decision of the first instance was not set aside. In other words, no request filed by the appellant was allowed. Nor did appellant point out any substantial procedural violation during the examining proceedings or in the decision of the examining division. The fact that the board based its conclusion on prior art different from that referred to in the impugned

decision corresponds to the normal exercise by the board of its power to review both the application and the decision of the first instance for compliance with the provisions of the EPC (Article 111 and 114 EPC), as well as to the principles set out in the case law (G 10/93 OJ 1995,172; Reasons, point 3).

Consequently not only is the precondition that the appeal be allowable not met but also no substantial procedural violation is identifiable. The request for reimbursement of the appeal fee is therefore refused.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

G. Rauh

A. S. Clelland