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# Datasheet for the decision of 14 December 2016

**Case Number:** T 1973/12 - 3.5.02

**Application Number:** 01986807.4

**Publication Number:** 1329022

**IPC:** H03J1/00

**Language of the proceedings:** EN

**Title of invention:**
Control codes for programmable remote supplied in XML format

**Applicant:**
Home Control Singapore Pte. Ltd.

**Relevant legal provisions:**
EPC Art. 123(2), 56

**Keyword:**
Amendments - added subject-matter (yes)
Inventive step - (no)

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**Case Number: T 1973/12 - 3.5.02**

# D E C I S I O N
# of Technical Board of Appeal 3.5.02
# of 14 December 2016

| | |
|---|---|
| **Appellant:** (Applicant) | Home Control Singapore Pte. Ltd.<br>151 Lorong Chuan no. 04-03A (Lobby C)<br>New Tech Park<br>Singapore 556741 (SG) |
| **Representative:** | Ferreccio, Rinaldo<br>Botti & Ferrari S.r.l.<br>Via Cappellini, 11<br>20124 Milano (IT) |
| **Decision under appeal:** | **Decision of the Examining Division of the European Patent Office posted on 18 May 2012 refusing European patent application No. 01986807.4 pursuant to Article 97(2) EPC.** |

**Composition of the Board:**

| | |
|---|---|
| **Chairman** | R. Lord |
| **Members:** | M. Léouffre |
| | W. Ungler |

## Summary of Facts and Submissions

I. The applicant appealed against the decision of the examining division to refuse the European patent application No. 01986807.4.

II. The examining division held that the subject-matter of claims 1, 7, 9 and 12 of a main request and claims 1, 6, 7 and 10 of an auxiliary request, both filed with a letter dated 30 March 2012, did not involve an inventive step in the light of document D1 (XP002446403): Tonks D.: "Philips Pronto Remote Control Review" www.remotecentral.com 2 March 2000, pages 1 to 7, retrieved from URL http://web.archive.org/web/20000301190500/http://www.remotecentral.com/pronto/index.html.

III. With the statement of grounds of appeal which was received on 14 August 2012, the appellant requested that the contested decision be set aside and that a patent be granted on the basis of the main request or, if that was not possible, on the basis of the auxiliary request, which were both the subject of the contested decision.

IV. With an official communication dated 25 April 2016 the board communicated its preliminary opinion that, inter alia, the invention appeared to be a mere application of a new technology for the purpose for which it was designed, and therefore did not appear to involve an inventive step in the sense of Article 56 EPC.

V. With a letter dated 25 August 2016 the appellant filed a new main request and a new auxiliary request.

VI. On 16 September 2016 the board summoned to oral proceedings. In the communication accompanying the summons the board reiterated its preliminary opinion that the invention appeared to be a mere application of a new technology for a purpose for which it was designed, and further expressed doubts as to whether claims 1 and 7 of the main request complied with the requirements following from Article 123(2) EPC.

VII. On 13 December 2016 the appellant responded by fax to a telephone call from the board, indicating that he would not be represented at the oral proceedings.

VIII. On 14 December 2016 oral proceedings took place before the board in the absence of the appellant.

IX. The appellant requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a main request or, if that is not possible, on the basis of the claims of an auxiliary request, both filed with the letter dated 25 August 2016.

X. *The main request*

(a) Claim 1 of the main request reads as follows:
"A method of providing, from a server (102), via a data network (104), and via an appliance (106), to a control device (108), data representative of a control code for installation on the control device (108) that determines an IR command or a RF command for controlling an apparatus,
characterized in that the data is defined using mark-up language descriptions and the method comprises a step of, at the server (102), at the appliance (106) or at the control device (108),

generating the control code from semantics of the mark-up language descriptions".

(b) Claim 7 of the main request reads as follows:
"A control device (108) for receiving data from a server (102) via a data network (104), or from a carrier, which data is representative of a control code for installation on the control device (108) that determines an IR command or a RF command for controlling an apparatus,
characterized in that the control device (108) comprises means for converting the data defined using mark-up language descriptions into the control code".

(c) Claim 9 of the main request reads as follows:
"A data base (116) for a control code for installation on a control device (108) that determines an IR command or a RF command for controlling an apparatus,
characterized in that
the data base comprises data representative of the control code, which data is defined using mark-up language descriptions".

(d) Claim 12 of the main request reads as follows:
"A control code for installation on a control device (108) that determines an IR command or a RF command for controlling an apparatus, characterized in that the control code is represented by data defined using mark-up language descriptions."

XI. *The auxiliary request*

(a) Claim 1 of the auxiliary request adds to claim 1 of the main request "and a step of supplying a GUI

element for use on the control device (108), the GUI element being supplied as further data defined using mark-up language descriptions".

(b) The device claim 6 of the auxiliary request adds to claim 7 of the main request: "the control device (108) having a display monitor and being suitable for receipt of a GUI element defined using mark-up language descriptions".

(c) Claim 7 of the auxiliary request adds to claim 9 of the main request that the database "comprises further data representative of a GUI element for use on the control device (108), the GUI element being defined using mark-up language descriptions".

(d) Claim 10 of the auxiliary request adds to claim 12 of the main request : "the mark-up language descriptions comprising further data representative of GUI element for use on the control device (108)".

XII. The appellant essentially argued as follows:

The XML language had been developed at least 3 years before the priority date of the present application. The fact that XML/XSL was widely known at the priority date (see page 3, lines 11 to 22 of the description of the application), but had not been used as presently claimed was indicative that those of skill in the art had not identified that the language would be suitable for use as presently claimed. If they had, this would have been implemented by those of skill in the art before the priority date of the present application. As it had not, the presently claimed invention involved an inventive step over D1.

Without taking account of the context of the application of a new technology like mark-up language descriptions, it should also not be asserted that the mere application of a new technology for the purpose for which it was designed did not involve an inventive step, in particular when the technology had not been applied in that context, even if the technology had been available and widely known.

Put another way, since the technology was well known at the priority date of the present application but had not been used in the claimed context, the invention could not be considered to be a mere application of a new technology for the purpose for which it was designed.

The same arguments applied to the claims of the auxiliary request. Furthermore, D1 neither disclosed nor suggested that a GUI element was used on a control device, the GUI element being supplied as further data defined using mark-up language descriptions, as claimed in the independent claims of the auxiliary request. Hence, the set of claims of the auxiliary request presently on file also met the requirements of Art. 56 EPC.

## Reasons for the Decision

1. The appeal is admissible.

2. *Article 123(2) EPC*

2.1 Claim 1 of the main request has been amended to comprise the feature "generating the control code from semantics of the mark-up language descriptions".
The only passage of the original published description which could be seen as related to this feature is the passage of page 6, lines 27 to 29 which reads:
"Appliance 106 has an XML application 118 that extracts the data based on the relevant tags and interprets the data according to the semantics of the tags in order to generate the control codes and/or the GUI panels for remote 108".
Thus, in the original description the code is not generated from semantics (as far as this expression could be understood). Rather, it is interpreted according to the semantics of the tags. Therefore, the addition of this feature to claim 1 results in the claim contravening Article 123(2) EPC.

2.2 The same objection applies to claim 1 of the auxiliary request.

*3. Article 56 EPC*

3.1 Mark-up information is information added to a document that enhances its meaning, in that it identifies the parts and how they relate to each other. More specifically, a mark-up language is a set of symbols that can be placed in the text of a document to demarcate and label the parts of that document, so that the final format of the document is both human-readable

and machine readable. The World Wide Web Consortium (w3c) defines the XML in its tutorials (see w3schools.com) as a software- and hardware-independent tool for storing and transporting data.

3.2 Thus a mark-up language like XML may be used to instruct remote applications to handle transmitted information in particular ways. In the present case, the mark-up language would instruct the server, the appliance or the control device to handle a transmitted data element as a control code. This is confirmed in the description of the application at page 2, lines 5 to 9: "An XML application, such as an XSL stylesheet, at the receiving end, operates on the data under control of instructions in the stylesheet. This application is used, for example, for control of generating the proper IR or RF commands based on the received data and for generating a GUI as an, e.g.,HTML page on a suitable display". Page 3, lines 7 to 10 recites further that "An XML application (here: a parser) extracts the relevant items and attributes from the XML data received and transforms them to further data that can be installed and/or processed locally at the destination platform". This is done using tags which "specify what each piece of data represents" (page 3, lines 15 and 16). As recited on page 6, lines 27 to 30, "Appliance 106 has an XML application 118 that extracts the data based on the relevant tags and interprets the data according to the semantics of the tags in order to generate the control codes and/or the GUI panels for remote 108".
The description gives at page 3, lines 23 to 27 an example of the type of transmitted data: "the IR or RF codes are described using XML. A number of parameters can be defined using XML tags, for example, carrier frequency, duty cycle, protocol type (FSK, biphase,

PWM, etc.), repetition time, on/off times of the signal, bit pattern of the command code, semantic meaning of the code, type of device for which it is intended (CD, VCR, TV, DVD, etc.), the brand name of the specific protocol, etc." (see also page 5, lines 30 to 34).

Therefore the application does not describe anything more than the conventional use of the XML language for the purpose for which it was developed at least three years (1997) before the filing date (priority date) of the application, namely to store and transport data by identifying the parts of a document and indicating how the parts relate to each other, the parts being here a control code or related parameters defining a control code and information relating to a GUI.

3.3 Thus claims 9 and 12 of the main request, which define respectively a database for control codes and a control code as such and which comprise as the sole special feature that "the control code is represented by data defined using mark-up language descriptions" cannot be considered as involving an inventive step in the sense of Article 56 EPC.

3.4 Document D1 discloses software to be implemented on a computer to which the Pronto device (the remote control) is connected by wire. The software allows the user to "open, save and merge any number of configurations - both your own and those downloaded from sites on the Internet. CCF [component configuration files] file contents are displayed as a familiar Windows file navigation tree with three main sections: Home, Devices and Macros" (cf. D1 at page 4, "Multiple File Handling").

Thus the Pronto device is a control device for receiving data from a server via a data network, or from a carrier, which data is representative of a control code for installation on the Pronto device that determines an IR command or a RF command for controlling an apparatus.

3.5 Starting from document D1, a person skilled in the art, aware of the relatively new XML language, would have used this language to transmit the CCF files from the server to the appliance and thereby enhance their intelligibility, because the language XML is designed for this kind of use (see the above definition of the XML by w3c). He would have thus arrived at a device according to claim 7 of the main request without exercising any inventive skill (Article 56 EPC).

3.6 Claims 6, 7 and 10 of the auxiliary request add respectively to claims 7, 9 and 12 of the main request:

- "the control device (108) having a display monitor and being suitable for receipt of a GUI element defined using mark-up language descriptions" (claim 6);
- "and comprises further data representative of a GUI element for use on the control device (108), the GUI element being defined using mark-up language descriptions" (claim 7);
- "the mark-up language descriptions comprising further data representative of a GUI element for use on the control device (108)" (claim 10).

A GUI comprises elements which are data of another type compared to the control codes, the description of which can however be similarly improved using a mark-up language. Hence the features added to the independent claims of the auxiliary request do not result in the

subject-matter of those claims involving an inventive step either, for the same reasons mentioned under item 3.5 above (Article 56 EPC).

3.7 The appellant argued that "the fact that XML/XSL was widely known at the priority date (see page 3, lines 11-22 of the description) and yet was not used as presently claimed is indicative of the fact that those of skill in the art had not identified that the language would be suitable for use as presently claimed".
The fact that no publication was cited revealing the use of a mark-up language for the description of IR or RF command-data or GUI data is however not a proof of inventive step, merely a proof of novelty, and does not mean that a skilled person would not have used this language for that purpose, as this appears to the board as an obvious possibility. The board therefore does not find this argument convincing.

4. Thus neither of the appellant's requests is allowable.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar: The Chairman:

U. Bultmann R. Lord

Decision electronically authenticated