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Bezeichnung der Erfindung: Luminance delay control apparatus in PAL/SECAM
Title of invention: television receiver
Titre de l'invention :

Klassifikation / Classification / Classement : HO4N 9/32, HO4N 9/535

ENTSCHEIDUNG / DECISION

vom / of / du 28 August 1989

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

RCA CORPORATION

Einsprechender / Opponent / Opposant :

INTERESSENGEMEINSCHAFT FÜR
RUNDFUNKSCHUTZRECHTE E.V.

Stichwort / Headword / Référence : TV receiver/RCA

EPÜ / EPC / CBE Articles 54(2), 56 and 114.2

Schlagwort / Keyword / Mot clé : "Document made available to the public" (no)
"Late submissions"
"Inventive step" (yes)

Leitsatz / Headnote / Sommaire

Europäisches
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des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours



Case Number : T 300/86

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 28 August 1989

Appellant :
(Opponent)

INTERESSENGEMEINSCHAFT FÜR
RUNDFUNKSCHUTZRECHTE E.V.
Bahnstraße 62,
D-4000 Düsseldorf 1

Representative :

Respondent :
(Proprietor of the patent)

RCA CORPORATION
30 Rockefeller Plaza
New York, NY 10020 (US)

Representative :

T.I.M. Smith, E.A. Kennington
RCA International Limited
Burdett House
15-16 Buckingham Street
London WC2N 6DU (UK)

Decision under appeal :

Decision of Opposition Division 058 of the European
Patent Office dated 30 July 1986 rejecting the
opposition filed against European patent
No. 0 013 596 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : P.K.J. van den Berg
Members : Y.J.F. van Henden
F. Benussi
R. Schulte
W.J.L. Wheeler

Summary of facts and submissions

- I. European patent No. 13 596 incorporating three claims was granted on 23 November 1983 in response to the European patent application No. 80 300 020.7, filed on 3 January 1980 and claiming the priority of the earlier application No. 7 900 801 which was filed in the United Kingdom on 9 January 1979.

Claim 1 reads as follows:

"A color television receiver operable in response to reception of composite color television signals inclusive of a luminance component and of a chrominance component encoded in PAL or SECAM format, said receiver having chrominance and luminance signal processing channels of which the luminance channel includes a chrominance component trap circuit (60, 80) and the chrominance channel includes: PAL decoder apparatus (19); transcoding means (13) responsive to signals received at its input for transcoding a chrominance component of SECAM format to a chrominance component of a quasi-PAL format; and a switching system (17) which (a) couples the output of said transcoding means (13) to the input of said PAL decoder apparatus (19) when in a first switching state, and (b) bypasses said transcoding means (13) when in a second switching state; characterised in that said luminance signal processing channel includes:

a delay line (33) which imparts to signals passed thereby a delay substantially equal to the difference between (1) the delay incurred in processing of the chrominance component of said received signals when said switching system (17) is in said first switching state, and (2) the delay incurred in processing of the chrominance component

of said received signals when said switching system is in said second switching state;

first and second signal paths (via 40 and 50 respectively) for the luminance component of said received signals, said first path including said delay line (33) and said second signal path bypassing said delay line; and

means (40, 50) responsive to the switching state of said switching system for (a) enabling said delay line inclusive signal path (via 40) while disabling said delay line bypassing signal path (via 50) when said switching system (17) is in said first switching state, and (b) enabling said delay line bypassing signal path while disabling said delay line inclusive signal path, when said switching system is in said second switching state, and in that the delay imparted by said chrominance component trap circuit (60, 80) to signals passed thereby is of such a magnitude that the luminance component at the output of said luminance signal processing channel when said switching system (17) is in said second switching state suffers a delay which compensates for the delay incurred in processing of the chrominance component of said received signals when said switching system is in said second switching state."

Claims 2 and 3 are dependent on Claim 1.

- II. An admissible notice of opposition was filed against the European patent on 7 August 1984. The Opponent expressed therein the view that, having regard to the state of the art known from the document "Report No. MRZ-209", issued on 21 March 1975 by the company "Laboratories RCA Ltd", Zurich, Switzerland, and hereunder identified as document

(D1), Claim 1 did not involve an inventive step within the meaning of Article 56 EPC. Claims 2 and 3 pertained to obvious embodiments of the claimed subject-matter. Revocation of the patent in its entirety was therefore requested - Article 100.a EPC.

- III. In a letter dated 4 January 1985, the Patentee drew the attention to the fact that (D1) was clearly denoted on its front page as being a confidential document loaned to the licensees of RCA, but not to be disclosed to third parties. Therefore, said document should not be considered as forming part of the state of the art according to Article 54(2) EPC.
- IV. The Opposition Division issued a decision on 30 July 1986 rejecting the opposition. It was not agreed therein with the Patentee's view that (D1) was not available to the public before the priority date of the patent-in-suit. A reason set forth to that purpose was that the possibility left to the licensees of RCA to incorporate in their products the technical information contained in (D1), and thereby to make said information available to the public by way of use, is a clear indication that no true obligation of maintaining said information secret was involved. Another reason was that, every major television manufacturer being a licensee of RCA and having received (D1), the latter had in fact been made available to every member of the relevant public. In the absence of any European precedent, the decision of the Federal German Bundesgerichtshof with the keyword "Holzimprägnerung", published in GRUR, 1961, pages 24 and 25, was relied upon by the Opposition Division to justify its reasoning. Nevertheless, the opposition was rejected on the ground that the skilled man reading (D1) would be led to increase the delay in the PAL chrominance signal path to make it equal to that of the SECAM chrominance signal path and,

secondly, to increase the luminance delay to match the now longer delay in both chrominance signal paths. No reason for introducing an additional switching and a variable delay in the luminance path or for matching the respective delays of the PAL chrominance signal path and chrominance trap circuit would be perceived. The subject-matter of claim 1 should therefore be credited with an inventive step.

- V. The Appellant (Opponent) lodged an appeal against the decision on 3 September 1986 and paid the fee at the same date. The statement of grounds dated 16 October 1986 was filed on 5 November 1986.
- VI. The Appellant submitted substantially the following arguments:
- 1) At the priority date of the patent-in-suit, it was already known to insert delay lines to compensate for the difference between the chrominance signal transmission times in the SECAM and PAL reception modes, respectively. To support this view, the Appellant cited for the first time page 261 of the "Elektronik Taschenbuch", vol. II, 7th and 8th edition, 1976/77, F. Dümmler editor, Bonn, FRG - document (D2).
 - 2) The cited RCA report No. MRZ-209 gave the skilled man an incentive to use a PAL-SECAM switching apparatus for switching on additional delay lines, either in the chrominance or in the luminance channel, in order to equalize the transmission times in both channels and make the signals arrive simultaneously at the matrix. No inventive step, therefore, could be perceived in the claimed subject-matter.

- 3) The alleged invention, to wit switchably correcting the variation of the transmission time difference between chrominance and luminance signals, had been made available to the public at the priority date of the patent-in-suit by prior use of the colour television set type CT 1410 of the firm Loewe Opta GmbH, FRG. As evidence therefor, the Appellant supplied an extract of the Loewe catalogue 1975 - document (D3) - showing the television set "CT 1410 Color Electronic", the Loewe servicing information leaflet No. 230-72275 - document (D4) - with a block diagram "Schaltungsteil 1" - document (D5) -, the Loewe servicing information leaflet No. 240-72863 - document (D6) - and the block diagram of the Loewe Opta transcoder type I-554-75 - document (D7).

VII. The Respondent (Patentee) submitted that document (D1) may not be considered as having been made available to the public before the priority date of the European patent No. 13 596. Nevertheless, the Respondent put forward further arguments to support the view that, starting from the teaching of (D1), an inventive step was required to arrive at the invention. For the case that the Board would decide to consider Appellant's late submissions (D3) through (D7), the Respondent argued that their content could not prejudice the allowability of the granted claims.

VIII. The Appellant requests that the impugned decision be set aside and the patent-in-suit revoked in its entirety. The Respondent requests that the appeal be rejected and the patent be maintained as granted. In case the Board does not grant this request, the Respondent submits two alternative conditional amendments consisting in the deletion of the portion of claim 1 appearing on page 12 of the application and in the insertion between pages 11 and

12 of an additional page 11a, there being two versions (A) and (B) of the latter. Although no reference thereto is made, the Board assumes that the above mentioned pages 11 and 12 are those received on 25 June 1982 with letter of 23 June 1982 and on whose basis the patent was granted. Finally, if the Board were not to decide in favour of either of the alternative amendments forming the auxiliary request, the Respondent makes a conditional request for oral proceedings under Article 116(1) EPC.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC. It is, therefore, admissible.
2. The question which has to be examined first of all is whether document D1 forms part of the state of the art within the meaning of Article 54(2) EPC.
 - 2.1 According to Article 54(2) EPC, the state of the art is held to comprise, inter alia, everything made available to the public by means of a written description before the date of filing of the European patent application. In the opinion of the Board, a written description should be regarded as made available to the public if, at the relevant date, it was possible for members of the public to gain knowledge of the content of the document and there was no bar of confidentiality restricting the use or dissemination of such knowledge. This is in agreement with the Guidelines for Examination in the EPO, see C-IV, 5.2. The group of persons to be taken into account as the public within the meaning of Article 54(2) EPC is naturally defined by the circle of persons to whom the content of the document may be of interest. All the interested parties must have the opportunity

of gaining knowledge of the content of the document, however unrestricted by contractual or other legal restrictions on use or dissemination of the information therein. Otherwise the document has not been made available to the public.

- 2.2 If the above principles are applied to the present case, the following emerges on the question of public access to Report No. MRZ-209 (=D1):

Document D1 comprises a six-page typed report to which six pages of circuit diagrams are attached. The document is entitled "Adaptation of the SECAM/PAL Converter for use with the TBA 990 (or TBA 520), TBA 540, TBA 560 IC kit". The title page bears the following printed note: "This report is the property of the RCA Corporation and is loaned to its licensees for their confidential use with the understanding that it will not be distributed or disclosed to third parties or be published in any manner, in whole or in part."

- 2.3 In its impugned decision the Opposition Division states that the wording of this note makes it prima facie sufficiently clear that document D1 is of a confidential nature and may not be made available to third parties. Nevertheless, from the fact that all prominent manufacturers of colour television sets are licensees of the publisher of document D1 the Opposition Division believes it can conclude that document D1 was made available to the public within the meaning of Article 54(2) EPC. This conclusion is based on two statements: firstly the assertion that only manufacturers of colour television sets are interested in document D1, and secondly that it is sufficient to assume public availability if the most prominent manufacturers of colour television sets are able to take note thereof.

- 2.4 The Board is not able to concur with these two assertions. It may be that manufacturers of colour television sets have the greatest interest in the contents of document D1 because it is concerned with the improvement of a SECAM/PAL converter. It cannot, however, be concluded from this that the public within the meaning of Article 54(2) EPC is identical with colour TV set manufacturers. From the nature of the document itself it follows that apart from manufacturers of colour television sets there are other groups of persons who could have a specialist interest in knowledge of the document. The Board includes here all persons involved in research, for instance at universities or in private research establishments, and also commercial manufacturers or designers of integrated circuits who may possibly inter alia act as subcontractors to colour TV set manufacturers.
- 2.5 But even if the public within the meaning of Article 54(2) EPC were to be equated with colour TV set manufacturers the Opposition Division has still only stated that the major manufacturers of colour television sets have had access to document D1. The impugned decision therefore itself concedes that some manufacturers of colour television sets [- clearly meaning the less prominent ones in that industry -] were excluded from access to the information. If access to a document is deliberately restricted to certain persons it is by that token not available to the public, even if the group of persons able to gain knowledge of the content of the document is large.
- 2.6 In support of its view the Opposition Division cited the German Federal Court of Justice's "Holzimprägnierung" (timber impregnation) decision dated 12 February 1960 (published in GRUR 1961, page 24): in that case the German Post Office had sent specifications for the impregnation

of timber poles to parties desiring to supply it with telegraph poles and those specifications are not accompanied by any note to the effect that they are to be treated as confidential; they were sent to all interested parties upon request. The Board, too, would consider a document circulated in this way as being made available to the public, since every interested party was able to acquaint himself with the content of the document. Here of course it is of no consequence that the group of persons has its natural limitation in the number of firms having any interest at all in the subject concerned (in that case impregnated timber poles). In contrast thereto, in the present case, not all the parties who were interested in document D1 were able to see it: the group of persons informed was restricted to those colour TV set manufacturers who were licensees of the patent proprietor, to the exclusion of all other interested parties.

The fact that document D1 was passed to a large circle of persons, namely a great many colour TV set manufacturers, does not of itself make the document publicly available, since in the first place - as already stated - a significant proportion of colour TV set manufacturers is not to be equated with the public; secondly all the recipients of the document were licensees of the company that issued it; thirdly all the recipients were bound to secrecy, and fourthly there has been nothing to indicate that the recipients broke their pledge of secrecy. The Board considers that the German Federal Court of Justice also seems to take a similar view in its "Rotterdam Geräte" (Rotterdam devices) decision dated 21 November 1972 (published in GRUR 1973, page 263, cf. point III 10). Here it was found that use was not made generally known if it was adequately ensured that the circle of persons remained limited and other parties did not have the opportunity of acquiring knowledge thereof.

This also applied - as the decision emphasised - even if the circle of persons having the possibility of acquiring such knowledge was relatively large.

- 2.7 The contested decision considers that document D1 became de facto publicly available through the use of the teaching contained therein.

However, the opponents have not asserted publicly accessible use nor substantiated it by adducing concrete details as to where, when, in what way and by whom the invention was used in a publicly accessible manner. Since the opponents have not even contended that the patented invention has been used, the Board sees no reason to investigate this particular matter of its own motion, even though it is conceivable that such is the case.

- 2.8 In the light of the foregoing it must be assumed that only a limited group of persons was able to gain knowledge of the content of document D1, and although this group was large, comprising the leading manufacturers of colour television sets, the Board is satisfied that enough care had been taken to ensure that the content of document D1 did not become known to other interested parties outside that group and no evidence has been presented to show it did.

- 2.8 Document D1 cannot therefore be considered to be the state of the art as defined in Article 54(2) EPC.

3. The cited documents (D3) to (D7) will now be considered together.

Document (D6) gives instructions for fitting a SECAM-transcoder I-554-75 in a colour television receiver CT 1410 of Loewe Opta GmbH. The reference signs mentioned

there, as well as the type number CT 1410, also appear in (D5), where they refer to the same components. Albeit the name of the constructor does not figure on (D5), the Board thus accepts that the latter is the wiring diagram of the colour television set referred to in (D3). This was not contested by the Respondent.

The circuit of document (D7) comprises a SECAM input stage and a PAL input stage to be respectively connected to sockets (9a) and (9b) which, as can be seen from document (D5), are parts of the chrominance circuit. Starting from the PAL input, the circuit of (D7) comprises a delay stage and, starting from the SECAM input, a SECAM demodulator, a SECAM-PAL converter, a quasi-PAL modulator and an output stage. It also comprises a PAL-SECAM selector for leading the signals received from either said delay stage or said output stage to a PAL-SECAM output, which, in turn, has to be connected to a component of the chrominance circuit. As can be seen from document (D5), the socket (9a) is directly connected to the output of the video demodulator and, over a line, to the socket (9b). Finally, the document (D6) states that, while fitting the transcoder in the television set, the Y-delay line (L 1406) has to be replaced by a new one imparting a higher delay, namely 800 ns instead of either 400 ns or 550 ns.

The Board infers from the documents (D3) to (D7) that,

- in a standard CT 1410 colour television set of Loewe Opta GmbH, a first delay is imparted to the luminance signal in the related processing channel to make the overall delay equal to the one imparted to the signals in the PAL chrominance signal processing channel, and that,

- in the same set equipped with the transcoder I-554-75, an extra delay is imparted to the PAL chrominance signal and a longer delay is imparted to the luminance signal, whereby the respective overall delays of the luminance signal and PAL-chrominance signal are rendered equal to the delay imparted to signals by the SECAM chrominance signal processing channel, a switching system being provided for enabling either the PAL chrominance signal processing channel or the SECAM chrominance signal processing channel.
4. The subject-matter of Claim 1 according to the patent-in-suit deviates from the teaching derivable from documents (D3) through (D7) in that,
- in the PAL reception mode, the difference between the respective delays imparted to the signals by the chrominance channel and the luminance channel is compensated for by the delay incurred by the luminance signal in the chrominance trap circuit, and in that,
 - in the SECAM reception mode, switching means route the luminance signal through a delay line in which it incurs an additional delay compensating for the difference between the respective delays imparted to the chrominance signal by the SECAM chrominance signal processing channel and by the PAL chrominance signal processing channel.

Said subject-matter is consequently novel with respect to the achievements of the firm Loewe Opta GmbH cited by the Appellant.

5. As stated in the grounds for appeal and as admitted by the Respondent in his reply dated 10 March 1987, the Y-delay line (L 1406) of the receiver CT 1410 is connected between the entry of the luminance channel and the chrominance trap circuit - cf "vorgeschaltet".

It follows that, starting from said receiver equipped with the transcoder I-554-75, the skilled man would have to take the following steps in order to arrive at the invention according to Claim 1 of the patent-in-suit:

- i) instead of replacing the line (L 1406) by a new one imparting to the luminance signal a delay equal to that incurred by signals in the SECAM chrominance path, connect in series with (L 1406) an additional delay line imparting to the signals a delay amounting to the difference between the delays respectively incurred in the SECAM chrominance path and in the line (L 1406);
- ii) remove the line (L 1406) and modify the chrominance trap circuit in such a way as to increase the delay it imparts to signals and thereby compensate for the removal of the line (L 1406);
- iii) remove the means for imparting an extra delay to the signals passing through the PAL chrominance path, and
- iv) provide switching means for enabling the additional delay line in the SECAM reception mode and for by-passing it in the PAL reception mode.

It must be noted, however, that the teaching of a wiring diagram is in some respects more limited than those of a written description. In particular, not all general

principles underlying the design of a circuit readily appear to the skilled man studying its wiring diagram.

In the present case, a skilled man who had studied the documents (D3-D7) might possibly think of providing, on the printed circuit bearing the delay line (L 1406), means for connecting a removable conductor in series with said line. In order to convert the receiver, it would thus be enough to replace said conductor by an additional delay line and this solution could be less expensive than the one disclosed in Appellant's late submissions based on documents (D3-D7).

Documents (D3-D7) do not prompt the skilled man to remove the line (L 1406) and redesign the chrominance trap circuit, nor to remove the means imparting an extra delay to the signals passing through the PAL chrominance path and to compensate for the resulting difference in chrominance signal transit times. Neither does the performance of the first step (i) give any incentive to do so, since no further modification of the receiver CT 1410 and/or transcoder I-554-75 would be required to ensure a correct operation thereof, and since it readily provides an advantage. It is only when the first three steps (i) to (iii) have been performed that the necessity of undertaking the last one (iv) becomes obvious.

Finally, a cogent reason for the skilled man not to deviate from the teaching of documents (D3-D7) is that the arrangements therein disclosed already obviate the shortcomings of the prior art referred to in column 1, lines 52 to 59, of the patent-in-suit.

The Appellant's arguments thus appear to be based on hindsight and the Board takes the view that, starting from the teachings of documents (D3) to (D7), the skilled man

cannot arrive at the invention without being involved in the exercise of inventive ingenuity.

6. No possibility to arrive at the present invention by combining the respective teaching of the documents (D3-D7) with that of documents cited in the European Search Report is perceived either. As a matter of fact, the Appellant never put forward the contrary. Likewise, neither does the combination of all the documents (D₂-D₇) render the present invention obvious.

- 6.1 The article headed "Neue Fernseh- und Hi-Fi-Geräte" in "Funkschau", vol. 46, No. 22, October 1974, Munich, FRG, discloses that as the delays respectively incurred by PAL and SECAM signals in a PAL-SECAM transcoder are different, the Y-delay line of a receiver has to be replaced. At the utmost, the Board infers therefrom that this first document refers to the same prior art as the preamble to the description of the patent-in-suit, lines 52 to 59 of column 1. Said article, therefore, does not destroy the novelty of the present invention - Article 54(1) EPC. Furthermore, for the reasons already explained in section 5 of the present decision, it cannot give an incentive to deviate from the solution disclosed in the documents (D3-D7).

- 6.2 GB-A- 1 358 551 pertains to a transcoder such that "the chroma signals of PAL and SECAM signals have equalized delays relative to the luminance signal of each". There is consequently no need to impart an additional delay to the luminance signal when the receiver is working in the SECAM reception mode. Therefore, said British patent specification neither destroys the novelty of the present invention nor is liable to help the skilled man starting from documents (D3-D7) to arrive at the present invention.

The same applies to the article headed "Neuartige Secam-Pal-Decodierung" in "Radio Mentor Electronic", vol. 38, No. 9, September 1972, Berlin, FRG, the reasons being the same.

- 6.3 The patent application FR-A- 2 296 338 was cited as an illustration of technological background. It does not disclose any information leading to the present invention, either alone or in combination with the documents (D3-D7).
- 6.4 The cited passages of (D2) do not reveal anything that goes beyond the disclosure of documents (D3-D7). They are accordingly not liable to affect novelty or inventiveness in the present case.
- 6.5 Having regard to the preceding, the Board concludes that, with respect to the state of the art disclosed in the documents cited in the European Search Report and in Appellant's submissions, the subject-matter covered by Claim 1 of the patent-in-suit is novel and involves an inventive step - Articles 54(1) and 56 EPC. Said subject-matter meeting the requirements of Article 57 EPC too, it is therefore patentable under Article 52(1) EPC. The same conclusion also applies to the subject-matter of Claims 2 and 3 which cover particular embodiments of the invention according to Claim 1.
7. Since the provisions of Article 100.a EPC do not prejudice the maintenance of the patent unamended, there is no reason to examine the Respondent's auxiliary requests.

Order

It is decided that:

The appeal is dismissed.

The Registrar:

S. Fabiani

S. Fabiani

The Chairman:

P.K.J. van den Berg

P.K.J. van den Berg