

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non

Aktenzeichen / Case Number / N^o du recours : T 378/88

Anmeldenummer / Filing No / N^o de la demande : 85 200 135.3

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 152 141

Bezeichnung der Erfindung: System for playing back a programme recorded on a
Title of invention: disc-shaped record carrier
Titre de l'invention :

Klassifikation / Classification / Classement : H04N 5/92, H04N 5/76, G11B 27/00

ENTSCHEIDUNG / DECISION

vom / of / du 22 March 1990

Anmelder / Applicant / Demandeur : N.V. Philips' Gloeilampenfabrieken

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 54

Schlagwort / Keyword / Mot clé : "Novelty (yes)" -
"Remittal to Examination Division"

Leitsatz / Headnote / Sommaire



Case Number : T 378/88

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 22 March 1990

Appellant : N.V. Philips' Gloeilampenfabrieken
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Decision under appeal : Decision of Examining Division 058
of the European Patent Office
dated 5 January 1988 refusing
European patent application
No. 85 200 135.3 pursuant to
Article 97(1) EPC

Composition of the Board :

Chairman : P.K.J. van den Berg
Members : W.J.L. Wheeler
E. Persson

Summary of facts and submissions

- I. Appellant's European patent application No. 85 200 135.3 was refused by a decision of the Examining Division dated 5 January 1988. That decision was based on Claims 1 to 8 filed with a letter dated 26 October 1987. The reason given for the refusal was that Claim 8, which was worded "Record carrier for use in one of the Claims 1 to 6.", was of such a vague and speculative nature that it could not be regarded as novel.
- II. On 3 February 1988 the Appellant filed a notice of appeal against that decision, accompanied by a statement of grounds and a new set of Claims 1 to 8. The appeal fee was paid on the same day.
- III. In response to a communication of the Board pursuant to Article 11(2) of the Rules of Procedure of the Boards of Appeal, in which it was noted that Claim 8 might cover blank carriers indistinguishable from those disclosed in GB-A-1 563 680 and GB-A-1 429 882 which appeared to be suitable for having a programme recorded on them in the manner specified in Claim 1, the Appellant filed on 31 October 1989 a new set of Claims 1 to 8 (Main claim set) and three further sets of claims (Alternative claim set A, B and C).
- IV. Oral proceedings were held on 22 March 1990. The Appellant explained that Claim 8 of the main set of claims was not intended to cover blank carriers on which no recording had been made. If the claimed record carrier were played back at n turns per second, the playback signal produced would not have a signal format in conformity with a standard television signal format. The Appellant submitted new Claims 7 and 8 and requested that the decision under appeal be set aside and that a patent be granted on the

basis of Claims 1 to 6 of the main claim set filed on 31 October 1989 and Claims 7 and 8 as submitted at the oral proceedings. An earlier request for reimbursement of the appeal fee was withdrawn.

V. Thus, the application now consists of the following documents:

Claims 1 to 6 filed on 31 October 1989 and Claims 7 and 8 submitted at the oral proceedings;

Description: pages 1, 1a, 3, 3a, 4 and 5 filed on 28 October 1987 and pages 2 and 6 to 10 as originally filed;

Drawings: sheets 1/2 and 2/2 as originally filed.

Claims 1 and 8 are worded as follows:

"1. A system for playback a program, which system comprises a disc-shaped record carrier (1) with a substantially spiral-shaped or concentric ring-shaped information track, in which the program has been recorded as a sequence of scenes, each scene being represented by a video picture, each comprising only one odd and only one even field, the number of fields per turn being equal to two, the beginnings of the odd and even fields being in alignment in a first and second radial direction respectively, the program has been recorded such that in the event that the program is read out with an angular scanning velocity of m turns per second, a playback signal is produced with a signal format which is in conformity with a standard television signal format; the system further comprises a read apparatus for reading the record carrier by scanning the record carrier (1) with an angular scanning velocity of m turns per second, which read

apparatus is provided with means (3,7,13,14) for moving the scanning point over one or more turns of the track in order to perform backwards and forwards jumps over an even number of fields, characterized in that each video picture recorded corresponds with a time slice of the program with a length of $1/n$ seconds, with $n < m$, in that the read apparatus is provided with means (8,15) for initiating the said forward and backwards jumps in conformity with a predetermined pattern, such that per second the fields of n different video pictures are produced as sets of two or more fields, each set comprising fields of only one video picture.

8. Record carrier comprising all the technical record carrier features as defined in any one of the Claims 1 to 6."

Reasons for the decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. The only point which the Board has to decide is whether the subject-matter of Claim 8 as submitted at the oral proceedings is novel.
 - 2.1 The Board agrees with the Examining Division that Claim 8 filed with the letter dated 26 October 1987 was not acceptable as it stood. In the opinion of the Board, that claim covered any record carrier suitable for use in the system according to any one of the Claims 1 to 6 filed with the letter dated 26 October 1987, including a blank carrier suitable for having a programme recorded on it in the manner specified in that Claim 1. As was stated in the Board's communication, such a blank would not have any

feature(s) by which it could be distinguished from known disc-shaped record carrier blanks such as those described in GB-A-1 563 680 (see e.g. page 1, lines 8, 9 and 34 to 37) and GB-A-1 429 882 (see e.g. page 1, lines 10 to 17 and page 2, lines 48 to 54), which likewise have substantially spiral-shaped or concentric ring-shaped information tracks in which a programme of consecutive film frames can be recorded. It appears that such known blanks could be regarded as being "for use in a system according to Claim 1" because they could be recorded on in the specified manner.

2.2 However, in the opinion of the Board, the present Claim 8, even in its broadest scope, i.e. when referring to Claim 1 solely and in spite of certain grammatical imperfections in the present Claim 1, does not cover blank carriers, but should be construed as being directed to a disc-shaped record carrier with a substantially spiral-shaped or concentric ring-shaped information track in which a programme has been recorded as a sequence of scenes, each scene being represented by a video picture, each comprising only one odd and only one even field, the number of fields per turn being equal to two, the beginnings of the odd and even fields being in alignment in a first and second radial direction respectively, and in which the programme has been recorded such that in the event that the programme is read out with an angular scanning velocity of m turns per second, a playback signal is produced with a signal format which is in conformity with a standard television signal format, characterized in that each video picture recorded corresponds with a time slice of the programme with a length of $1/n$ seconds, with $n < m$.

2.3 In a conventional record carrier with a nominal play back speed of m video pictures per second, m video pictures'

worth of video fields are recorded for each second of play back time. None of the documents mentioned in the European search report, nor either of the documents cited by the Board (see paragraph III above), shows that it was known to record fewer (n) video pictures' worth of video fields than are needed for each second of play back time. This is not a feature of the programme itself, but rather a technical feature of the way in which the programme has been recorded, with technical consequences for the way in which it has to be played back: in order to reproduce the programme at its correct speed, while reading the record carrier at the speed required to produce a playback signal with a signal format which is in conformity with a standard television format, it is necessary to insert additional video fields during play back.

2.4 Furthermore, in the absence of any evidence on the files to the contrary, the Board accepts the Appellant's assurance, given at the oral proceedings, that the claimed record carrier is distinguishable from a conventional carrier intended to be played back at n turns per second, because, if the claimed record carrier were played back at n turns per second, the playback signal produced would not have a signal format in conformity with a standard television signal format.

2.5 In the opinion of the Board, the subject-matter of the present Claim 8 is new compared with the prior art mentioned in the European search report and in paragraph 2.1 above. As the reason for which the Examining Division refused the application no longer applies, the Board must set aside the decision under appeal.

3. However, the Board cannot order grant of a patent on the basis of the documents specified in paragraph V above because the Examining Division has not yet considered

whether the present application meets all the other requirements of the EPC. In order to avoid loss of an instance, the Board considers it appropriate, in accordance with Article 111(1) EPC, to remit the case to the Examining Division for further prosecution.

4. For avoidance of doubt, it is emphasised that the only point which the Board has decided is that the subject-matter of the present Claim 8 is new compared with the prior art considered by the Board. That prior art is summed up under foregoing item 2.5. According to Article 111(2) EPC the Examining Division shall be bound by the ratio decidendi of the Board of Appeal only in so far as the facts are the same. This means that if the wording of Claim 8 and the prior art considered by the Examining Division are both the same as considered by the Board, the Examining Division shall be bound by the Board's decision, that the subject-matter of Claim 8 is novel. If, however, the facts before the Examining Division would be different from those considered by the Board, and the Examining Division should come to the conclusion that the claimed subject-matter does not meet some requirement of the EPC, the present decision of the Board does not debar the Examining Division from raising appropriate objections.


Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.


2. The case is remitted to the Examining Division for further prosecution on the basis of the documents specified in paragraph V above, taking account of the remarks in paragraph 4 above.

The Registrar



M. Beer

The Chairman



P.K.J. van den Berg