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File Number: T 240/91 - 3.5.1
Application No.: 86 117 673.3
Publication No.: 0 227 052
Title of invention: Servo control apparatus

Classification: G05D 13/62

DECISION
of 20 November 1992

Applicant: AMPEX CORPORATION

Headword: Divisional/AMPEX

EPC Article 76

Keyword: "Added subject-matter (no)"
"Remittal to the first instance (yes)"



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Boards of Appeal

Chambres de recours

Case Number : T 240/91 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 20 November 1992

Appellant : AMPEX CORPORATION
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Decision under appeal : Decision of the Examining Division of the
European Patent Office dated 27 December 1990
refusing European patent application
No. 86 117 673.3 pursuant to Article 97(1) EPC.

Composition of the Board :

Chairman : P.K.J. van den Berg
Members : C.G.F. Biggio
G. Davies

Summary of Facts and Submissions

I. European patent application No. 86 117 673.3, which is a divisional of patent application No. 83 301 020.0 (now European patent EP-B1-0 091 192), was filed at the EPO on 25 February 1983, claiming priority from patent application No. 364 963, filed in the United States of America on 2 April 1982. It was published under the No. EP-A1-0 227 052 and refused, pursuant to Article 97(1) EPC, by decision of the Examining Division dated 27 December 1990.

II. The decision was based on the application comprising the following documents.

Description: pages 1 and 3 to 20 as originally filed, and page 2 as filed with a letter dated 25 August 1989;

Claims: Nos. 1 to 8 as filed with a letter dated 25 August 1989;

Drawings: sheets 1/7 to 7/7 as originally filed.

Claim 1, as filed with said letter dated 25 August 1989, reads:

"Apparatus for the servo control of a rotating mechanism, including a velocity closed servo loop (100, 122, 126, 114, 116) and a phase closed servo loop (100, 108, 114, 116), characterised in that the servo loops are under the control of a microprocessor (30) which, by virtue of its high resolution resolving capability, enables the velocity closed servo loop to perform the major portion of the servo control so that the phase closed servo loop essentially operates as a phase positioning loop".

III. The single reason given for the refusal was that the application was not in conformity with Article 76 EPC, because the parent application 83 301 020.0, as filed, did not contain either a claim corresponding to the above-quoted Claim 1 of the divisional application or any such broad definition of apparatus for servo control of rotating mechanisms.

In the appealed decision, the Examining Division pointed out in particular that, although the object of the invention defined in Claim 1 of the divisional application was set forth in the parent application as filed, the invention itself was not.

IV. Notice of Appeal was filed on 28 January 1991 and the appeal fee was paid the same day.

A Statement of Grounds of Appeal was filed on 13 March 1991, in which the Appellant submitted that:

- the divisional application did not contain matter contrary to Article 76 EPC and had not been amended contrary to Article 123(2) EPC,
- the subject-matter claimed by the divisional application was fully disclosed and at least in substance defined in the parent application (83 301 020.0) as filed (page 3, lines 1 to 9 thereof).

The Appellant requested that the appealed decision be set aside. Oral proceedings and reimbursement of the appeal fee were also requested.

V. On 10 September 1991 the Board summoned the Appellant to the requested oral proceedings, which took place on 20 November 1991.

VI. On 7 October 1991 the Appellant filed two newly drafted sets of claims, to be respectively considered as first and second auxiliary requests during said oral proceedings.

VII. During the oral proceedings held on 20 November 1991, the Appellant submitted that the subject-matter of Claim 1, as refused by the Examining Division, was duly supported by the disclosure of the parent application (83 301 020.0) as filed (page 3, lines 1 to 9 and page 14, lines 4 to 20 thereof).

He amended Claim 1, according to his second auxiliary request and filed the corresponding amended set of claims in replacement of that filed on 7 October 1991.

He stated his final requests as follows:

Main request: that the appealed decision be set aside, and that a patent be granted on the basis of the application comprising Claims 1 to 8 dated 25 August 1989 and filed on 30 August 1989, as refused by the contested decision;

First auxiliary request: that Claims 1 to 5 filed on 7 October 1991 be considered;

Second auxiliary request: that Claims 1 to 4 as amended and filed during Oral Proceedings be considered, and

that, in the event that the Board were to refuse the main or the first auxiliary request, the case should be referred to the Enlarged Board.

He withdrew his request of reimbursement of the appeal fee.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. In the Board's opinion, the somewhat unclear wording of Claim 1, as refused by the Examining Division, defines an apparatus for servo control of a rotating mechanism, including a velocity closed servo loop and a phase closed servo loop, in which both said servo loops are so implemented - at least partially - by the same controlling microprocessor, that the latter, by virtue of its high resolution resolving capability, provokes the velocity closed servo loop to perform the major portion of the servo control so that the phase closed servo loop essentially operates as a phase positioning loop.
3. In the parent application (83 301 020.0) as filed, the Board finds the following statements:

"The present invention generally relates to servo systems for rotating mechanisms and, more particularly, to a microprocessor controlled scanner servo system for a magnetic tape recording and reproducing apparatus" (page 1, lines 2 to 5),

"Another object of the present invention is to provide an improved scanner servo of the foregoing type, which by

virtue of it being under microprocessor control has a velocity closed servo loop and a phase closed servo loop, which because of the high resolution resolving capability, enables the velocity closed loop to perform the major portion of the servo control so that the phase closed servo loop essentially operates as a phase positioning loop in the true sense" (page 3, lines 1 to 9), and

"The scanner servo is much more accurate than many prior art devices because the delays are very accurate. This is due to the fact that the delays are computed to a very high resolution by the microprocessor. In this regard, for a 625 PAL or SECAM system, an internal microprocessor timer has a period of 20,000 microseconds which means that the delay is accurate to one part over 20,000 microseconds. This permits the gain bandwidth of the velocity loop to be increased quite significantly to obtain better and more accurate control. It also enables the velocity loop to perform the majority of the error correction and the phase loop merely provides the proper positioning of the scanner, i.e. it is merely a positioning loop. The counting function and error determining portions of both of the loops are performed by the microprocessor and the only portion of the functional block diagram that is performed outside of the microprocessor is from the digital-to-analog converter through the motor drive amplifier" (page 14, lines 4 to 20).

4. In the Board's opinion, the above-quoted statements contained in the parent application (83 301 020.0), as filed, duly and fully disclose an apparatus of the kind specified in point 2 above, i.e. an apparatus of the kind defined by Claim 1, as refused by the Examining Division.

In the appealed decision, the Examining Division expressed the view that the object of the invention defined in

Claim 1 of the divisional application was set forth in the parent application as filed, but the invention itself was not.

The Examining Division arrived at this opinion by considering that a statement of object is a promise of what the person skilled in the art can expect to achieve, if he carries out the invention, but that such a statement is not a definition of technical subject-matter for which protection is, or might subsequently be, sought.

At the basis of this opinion lies apparently the interpretation of the word "object", as meaning the purpose or the aim of the invention or the problem to be solved by the invention, without any indication of the technical features necessary for achieving that aim or solving that problem, i.e. the invention itself.

The Board acknowledges that, on the basis of such an interpretation, there may be circumstances in which a statement of an object of an invention may not be considered as a disclosure of the invention itself. The Board is, however, of the opinion that this is not necessarily the case under all circumstances.

In the present case, for instance, the statement of another object on page 3, lines 1 to 9, of the parent application, as quoted under the foregoing reason 3, comprises not only a number of technical features, but also their interrelationships and all this in such a way that it may be considered as a broad statement of the invention itself, i.e. as claimed in Claim 1 of the main request, which is further illustrated in its internal functioning by the also quoted passage of page 14 of the parent application.

In the Board's view, therefore, the quoted wording of page 3: "Another object of the present invention is to provide ..." could and should equivalently be read as: "The present invention also relates to ..." or "The present invention also provides ...".

5. The Board is, consequently, of the opinion that Claim 1 of the main request does not offend against Article 76 EPC, so that the Board does not agree with the Examining Division's decision to refuse the application on that ground.
6. The Board is accordingly of the opinion that the appealed decision is to be set aside.
7. The Board considers that the following questions are not relevant to the issue under appeal, but remain open:
 - Whether or not the present divisional application meets the requirements of Article 83 EPC;
 - Whether or not its claims meet the requirements of Article 84 EPC;
 - Whether or not the subject-matter claimed meets the requirements of Articles 52(1), 54 and 56 EPC; and
 - The extent to which the claims of the present application overlap with those of European patent EP-B1-0 091 192 (granted upon the parent application No. 83 301 020.0).
8. The Board is accordingly of the opinion that all these questions must be duly examined.

9. However, in order not to deprive the Appellant of his right to have his invention examined by two instances, and in accordance with the established jurisprudence of the Boards of Appeal, the Board uses its discretion under Article 111(1), second sentence, EPC, and remits the case to the first instance for further prosecution on the basis of the main request. There is no need, therefore, for the Board to consider the auxiliary requests.

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar:

The Chairman:

M. Kiehl

P.K.J. van den Berg