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D E C I S I O N
of 21 November 1996

Case Number: T 0899/95 - 3.5.1

Application Number: 87907521.6

Publication Number: 0289625

IPC: H04Q 9/00

Language of the proceedings: EN

Title of invention:
Remote Commander

Patentee:
SONY CORPORATION

Opponent:
Interessengemeinschaft für Rundfunkschutzrechte E.V.

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step - (yes) "

Decisions cited:
J 0025/86, T 0483/90, T 0613/91, T 0867/91, J 0039/92

Catchword:
-



Case Number: T 0899/95 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 21 November 1996

Appellant:
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Appellant:
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 05 October
1995 concerning maintenance of European patent
No. 0 289 625 in amended form.

Composition of the Board:

Chairman: P. K. J. Van den Berg
Members: A. S. Clelland
 C. Holtz

Summary of Facts and Submissions

- I. European patent No. 0 289 625 was granted on 22 July 1992 on the basis of European patent application No. 87 907 521.6, filed on 11 November 1987 and claiming a priority of 12 November 1986.
- II. An opposition was received on 20 April 1993, requesting the revocation of the patent in its entirety on the ground that the subject-matter of the claims as granted lacked an inventive step (Articles 100(a), 52(1), and 56 EPC). Oral proceedings were held before the opposition division on 20 September 1995, at the end of which the patent was maintained in amended form based on the second subsidiary request, received 27 August 1994 and amended during the oral proceedings. The written decision was dispatched on 5 October 1995. Inter alia the following documents were cited:
- D1 JP-A-60 254 898 corresponding to US-A-4 623 887
D5 EP-A-0 124 331
D6 Operating Instructions for TV-Games of the LOEWE Company, Berlin/Kronach, DE
- III. On 3 November 1995 the Opponent lodged an appeal against this decision and paid the prescribed fee. The Appellant will hereinafter be referred to as "the Opponent". A statement setting out the grounds of appeal was received on 31 January 1996.
- IV. On 29 November 1995 the Patentee also lodged an appeal against the decision and paid the prescribed fee. The Cross-Appellant will hereinafter be referred to as "the Patentee". In the written statement of grounds of appeal, received 2 February 1996 oral proceedings were conditionally requested.

- V. Oral proceedings before the Board were held on 21 November 1996. In these proceedings the Patentee argued that the invention was not obvious because the known pre-programmed remote controller of D5 and the reconfigurable remote controller of D1 represented solutions that went in opposite directions. In combining these two solutions, the Patentee had made another choice that could only be regarded as obvious with the benefit of hindsight.

The Opponent argued that, after reading D1, the skilled person would have been aware of the desire to have a single remote control unit. The skilled person would have also been aware of the known pre-programmed remote control. The combination of these two ideas would have therefore been an obvious step. Moreover, the claimed remote control was merely a collocation of known features, each operating in their normal manner and not interacting in any way.

- VI. The Opponent requested that the interlocutory decision be set aside and that the patent be revoked in its entirety.

The Patentee requested that the decision under appeal be set aside and that the patent be maintained as granted (main request) or on the basis of one of the four subsidiary requests, filed in the letter of 5 November 1996 with amendments indicated in the oral proceedings.

- VII. Claim 1 of the main request reads as follows:

"A remote commander in which data transmitted from another remote commander (2) can be received, stored as user remote control data corresponding to respective operation keys (10a, 10b, ...), and transmitted by operating said operation keys, characterised by a read

only memory (3) for storing original remote control data and switching means (4) for selecting and using said user remote control data or said original remote control data."

Reasons for the Decision

1. Admissibility of the appeals

1.1 The Patentee argued that the Opponent's notice of appeal failed to meet the requirements of Rule 26(2)(c) EPC, in that the Opponent is a legal entity but is not identified by its official designation. Rule 26(2)(c) EPC applies to the notice of appeal by virtue of Rule 64(a) EPC. Since however from a brief perusal of the opposition file the Opponent's identity is quite clear, it appears that following J 0025/86, OJ EPO 1987, 475, which is explicitly concerned with Rule 26(2)(c) EPC, see especially point 4 of the Reasons, as well as T 0483/90, T 0613/91, T 0867/91 and J 0039/92 (none of which have been published), no objection arises.

1.2 The appeals both comply with Articles 106 to 108 and Rule 64 EPC and are, therefore, both admissible.

2. The Prior Art

2.1 The patent in suit relates to a programmable remote commander (controller) for a plurality of different items of equipment; implicitly in the consumer entertainment field. It is common ground that pre-programmed remote controllers dedicated to specific items of equipment were known at the priority date. Such controllers included a permanent memory device (e.g. ROM) and an infrared transmitter. It was not

contested that by the priority date such devices had been standard in the art for many years and therefore represented common general knowledge.

- 2.2 The drawbacks of this remote controller are discussed in D1 at column 1, lines 24 to 35, and may be summarised as follows: if a consumer were to buy a television from manufacturer A, a video recorder from manufacturer B and a hi-fi from manufacturer C, then three separate remote controllers would be provided, one for each piece of equipment. A need, therefore, arose to provide a remote control operable for several different devices.
- 2.3 It is common ground that a solution to this problem is known from D1. In the present proceedings, as in the opposition, the discussion of D1 has been based on US patent US-A-4 623 887, which is an English-language equivalent to D1, albeit late-published. D1 discloses a reconfigurable remote controller which is capable of learning, storing and repeating the remote control codes from any other infrared transmitter. It includes an infrared receiver, random access memories (RAM), and an infrared transmitter (lines 1 to 7, Abstract of D1). The user can thus control all the equipment with the single remote controller. This controller however has the disadvantage that its operation depends on the existence of pre-programmed controllers; no provision is made for initial storage of data corresponding to a particular device and it cannot, for that reason, be sold together with consumer equipment as a main remote control.
- 2.4 A further solution is known from D5, which stores the data for a multiplicity of devices in ROM. Thus, a manufacturer, starting out from the D5 device, could provide a remote control usable both for the device with which it was sold and for other devices, e.g. a TV

remote control could be provided with VCR functions. Although not stated explicitly in D5 the implication contained throughout the description is that the devices of a single manufacturer are to be addressed. D5 moreover only makes provision for addressing a single device in each category, the relevant device being selected at the factory by means of hard-wired links to a microprocessor.

2.5 The Board accordingly considers that the problem to be solved, as faced by the skilled person in the employ of an equipment manufacturer, is to provide a controller for sale with a specific item of equipment but which is usable with other items of equipment from different manufacturers.

3. *Inventive step (main request)*

3.1 In accordance with Claim 1 of the main request the problem set forth at point 2.5 is in essence solved by a programmable remote controller which is switchable to select either user-programmed remote control data or pre-programmed remote control data, i.e. a combination of the two known remote controllers described in paragraphs 3.1 and 3.2, respectively.

3.2 The Opposition Division and the Opponent both argued that the skilled person, starting from the standard pre-programmed controller and becoming aware of the programmable remote controller of D1, would be led to combine these ideas in a single device. It was argued that the skilled person would realise that D1 disclosed a solution of general applicability to the problem of controlling different devices which could be applied to the known pre-programmed remote controller to arrive at the combined remote controller as claimed.

- 3.3 This argument, although attractive, does not take into account the problem to be solved. If a manufacturer desired to provide a remote control usable with a wider range of devices than that known from D5, the obvious solution to the problem would be to modify the D5 control to enable a wider range of devices to be addressed, for example by replacing the factory-fitted links with programmable logic controlled by a look-up table of devices. It does not appear to the Board that the skilled person would seriously consider the use of a teachable remote control as disclosed in D1 since this does not enable the manufacturer to pre-program his own data. Such devices would seem rather to be, as noted above, the preserve of third-party suppliers.
- 3.4 The step involved in appreciating that the problem can be solved by a combination of existing devices is admittedly small; nevertheless, this step was neither taken by the art, nor was it suggested by any of the prior art documents. The Board accordingly concludes that the subject-matter of Claim 1 of the Patentee's main request involves an inventive step.
- 3.5 The Opponent argued that because of copyright considerations the skilled person would be prejudiced against pre-programming the remote controller of D5 with the codes of other manufacturers' equipment. This arguments works both ways however: the same prejudice could be assumed to exist against inviting the public to copy manufacturers' codes by means of the D1 device. The Board moreover inclines to the Patentee's view that, given the prevalence of cross-licencing agreements in the industry this would not be a paramount consideration.
- 3.6 The Opponent also argued that the alleged invention is simply a combination of the two different types of remote controller, each working in the normal way and

not exhibiting any inter-working relationship other than sharing a common keyboard. D6 was said to exemplify a remote controller in which by means of a switch common keys were used for differing functions.

The Board accepts that the sharing of a keyboard for differing functions is known from D6; the question to be answered however is whether the skilled person would have found it obvious to provide the specific functions claimed. Although there is no doubt that the skilled person, given the contents of D1 and D5, **could** have combined the two devices to form a single control incorporating a pre-programmed part and a programmable part, nothing in the prior art at the Board's disposal leads to the conclusion that he **would** have done so. The Board finds no incentive for the skilled person to combine the teaching of D1 and D5 rather than merely follow the divergent paths mapped out by these documents.

4. Since the main request has been found allowable it is not necessary to consider the Patentee's subsidiary requests.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:

M. Kiehl

P. K. J. Van den Berg