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D E C I S I O N
of 12 September 2001

Case Number: T 0212/99 - 3.5.2

Application Number: 91302686.0

Publication Number: 0451990

IPC: H03J 7/18

Language of the proceedings: EN

Title of invention:
Frequency selecting method in RDS receiver

Patentee:
PIONEER ELECTRONIC CORPORATION

Opponent:
Robert Bosch GmbH
Interessengemeinschaft für Rundfunkschutzrechte GmbH
Schutzrechtsverwertung & Co. KG

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
"Alleged prior use - witness offered but not heard by opposition division"
"Remittal to opposition division"

Decisions cited:
T 0461/88

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0212/99 - 3.5.2

D E C I S I O N
of the Technical Board of Appeal 3.5.2
of 12 September 2001

Appellant: (Opponent 01)
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Representative: -

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Representative: -

Respondent: (Proprietor of the patent)
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Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 22 December 1998 concerning maintenance of European patent No. 0 451 990 in amended form.**

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: J. M. Cannard
B. J. Schachenmann

Summary of Facts and Submissions

I. Opponent I (Robert Bosch GmbH) and Opponent II (Interessengemeinschaft für Rundfunkschutzrechte GmbH) appealed against the decision of the opposition division concerning the maintenance of European patent No. 0 451 990 in amended form in accordance with the proprietor's request filed with the letter dated 26 October 1998.

II. Prior art documents:

D3: Funkschau, 25/1986, pages 28 to 30,

D4: DE-A-3 832 455,

D5: "RDS, the Engineering Concept", Technical Publications Unit, BBC, 1989,

D6: Tech. 3244-E, Specifications of the Radio Data System RDS for VHF/FM sound broadcasting, European Broadcasting Union, Brussels (BE), 1984,

D7: Kundendienstschrift BLAUPUNKT Autoradio MONTREUX RDR 49, December 1988,

D8: RDS program extract,

D9: EP-A-0 275 527,

cited in support of the opposition were referred to during the appeal oral proceedings.

In addition, documents:

D11: Ekbert Hering: "Software-Engineering", Verlag Friedrich Vieweg & Sohn, Braunschweig/Wiesbaden (DE),1984, page 39,

D12: "C-Programmierrichtlinien", S & P Media GmbH, Entwicklungsgesellschaft für Hard- und Software mbH, Bielefeld (DE), December 1989, page 33,

D13: T. Ottmann/P. Widmayer: "Programmierung mit PASCAL", Verlag Teubner, Stuttgart (DE), 1980, pages 63, 68 and section 8 beginning on page 241,

were cited for the first time in Opponent I's statement of grounds of appeal.

III. Claim 1 of the amended patent reads as follows:

"A receiving frequency selecting method in an RDS receiver which can receive an RDS broadcasting wave on which a plurality of frequency data and program ID data of a same network station group are superimposed, the program ID data including PI data, in which a receiving frequency is switched from a current receiving frequency to a frequency of another same network station which is given by one of said plurality of frequency data, comprising:
a first step of holding the program ID data which is obtained from the broadcasting wave of the current receiving frequency in response to a command;
a second step of tuning the receiver to another frequency based on said plurality of frequency data; and detecting the existence of a received station;
a third step of taking in the program ID data obtained

from the broadcasting wave of the received station detected in said second step;

a fourth step of setting a timer to time-out after a predetermined time has elapsed from a time point when the existence of the received station has been detected in the second step; and

a fifth step of comparing whether the program ID data obtained in said third step coincides with the program ID data held in the first step or not and setting the frequency of the presently received station as a new receiving frequency when said PI data coincides;

characterized by

a step of determining when the same program ID has been taken in a plural number of times in the third step, wherein the fifth step of comparing is executed either when it has been determined that the same program ID data has been taken in a plural number of times in the third step, or that the predetermined time has elapsed, whichever occurs soonest."

Claims 2 and 3 are dependent on Claim 1.

IV. Oral proceedings were held on 12 September 2001.

V. The arguments of the appellants/opponents I and II can be summarised as follows:

In the oral proceedings documents D7 and D8 were considered as the most relevant prior art. D7 related to a service manual of a RDS car radio Blaupunkt Montreux RDR 49 which was available to the public before the date of priority of the patent in suit. The RDS car radio Montreux was equipped with a microprocessor and a memory as this appeared from D5, page 10 and the diagram on page 42. D8 listed, in a

programming language, part of the program of the car radio Montreux RDR 49. This could be confirmed by the witness offered in the proceedings before the opposition division, but the opposition division did not hear the witness. The program was stored in a ROM which could be read out by a skilled person. In contrast with the case T 461/88 the skilled man thus could read, analyse, copy and reproduce the program without undue burden. The program was accordingly available to the public at the priority date of the patent in suit. The method of Claim 1 which could be read on the program according to D8 (subroutines TEPI and TEPI2) thus lacked novelty in view of the prior use of the car radio Montreux RDR 49.

The method according to Claim 1 merely differed from the disclosure of D3 and D4 by its fourth step of setting a timer and its last step wherein the ID comparison was executed either when the same program ID data had been taken in a plural number of times, or when the predetermined time had elapsed. It was however obvious for the skilled person to limit the time during which an alternative frequency was received for reducing the muting time of the receiver and to take in the same ID data a plural number of times for reducing the errors in the received data. Documents D11, D12 and 13 disclosed the interruption of a time loop by means of a jump command in a program.

In addition the method according to Claim 1 of the patent in suit was anticipated by the teaching of D9, or at least only differed from the first alternative method disclosed in D9 by the last step set out in Claim 1. Since according to the second alternative method of D9 the AF-data were received a plural number

of times for reconstructing the incorrect data blocks, the method set out in Claim 1 lacked inventive step.

VI. The arguments of the respondent/proprietor can be summarised as follows:

D8 was an internal document and was not available to the public at the priority date of patent in suit. A lot of changes usually occurred during the development of a software program and it was not clear to which extent the program stored on the microchip of the car radio Montreux was identical to the program listed in D8. This program was developed 12 years ago and it was doubtful whether the people involved in its development could still remember such changes. D5 was introduced at a late stage in the appeal procedure. It was not possible to analyse the software program stored on the microchips of the car radio Montreux. Accordingly this program did not form part of the available prior art.

According to Claim 1 of the patent a parallel check was carried out as to whether or not the same PI data at the alternative frequency has been received more than once, within the running of the timer; the step of going on to the PI check was carried out when the same PI data was taken in more than once or the timer timed out, whichever occurred first. None of the prior art cited by the opponents taught such features to the public before the priority date of the patent in suit. More specifically, as pointed out by the opponents themselves, although the PI code was input twice, the program contained in D8 nonetheless waited for the predetermined time interval of a timer to elapse before carrying out the PI check; this was in direct contrast to the present invention.

VII. The appellants requested that the decision under appeal be set aside and that the patent be revoked, or, as auxiliary request, that the case be remitted to the first instance.

VIII. The respondent requested that the appeal be dismissed and the patent maintained as amended during the proceedings before the opposition division.

Reasons for the Decision

1. The appeal is admissible.

2. D7 is an extract from the service manual of a RDS car radio of the type Blaupunkt Montreux RDR 49 dated December 1988. D5, which relates to the engineering of RDS systems, more specifically mentions the car radio Montreux RDR 49 (page 10) and discloses a diagram of a RDS receiver with automatic tuning which comprises a microprocessor and a memory storing for instance AF lists (page 42, the figure). D8 contains an extract of a program which implements functions of a RDS radio receiver.

3. Alleging that:

- the car radio receiver Montreux RDR 49 was a mass product and a large number of said receivers has been sold,

- it comprised a microprocessor and a separate memory chip on which a software program implementing the RDS functions was stored,

- the program extract contained in document D8 is a software listing of the program used in the car radio Montreux RDR 49,

the appellants argued that:

- the program stored on the memory chip of said car radio could be easily read, copied, analysed and reproduced, in contrast with the case T 461/88 (OJ EPO, 1993, 295),

- the RDS software program contained in D8 and the method implemented by the car radio Montreux 49 were available to the public before the priority date of the patent in suit.

4. In the view of the Board the circumstances in the present case could well differ from those underlying case T 461/88 in which a program written in machine language was stored on a microchip sold to a customer and could only have been reconstructed with great difficulty using a "disassembler" program or by reverse engineering. However, the Board cannot decide upon this matter, since the witness offered to support the allegations of the appellants has not yet been heard.

5. According to the appellants the software program contained in D8 comprised two subroutines which respectively implemented a timer according to the fourth step of Claim 1 and a repetitive step of taking in and comparing the program ID data of the current receiving frequency and of an alternative frequency according to the fifth step of Claim 1. However the appellants have not provided any prior art documents to clarify or explain the meaning of the commands used in

the program according to D8, but, again, would rely on the offered witness.

6. The parties and the Board thus agree that the witness offered in the opposition proceedings by the Opponent I has to be heard to testify the validity of the appellant's allegations (see point 3, supra) and to explain the program listed in D8.

7. In this situation, the Board considers it appropriate to exercise its power under Article 111(1) EPC to remit the case to the first instance, so the parties are not deprived of the opportunity to have the issues considered at two instances.

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. Hörnell W. J. L. Wheeler