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D E C I S I O N
of 24 March 2004

Case Number: T 1052/00 - 3.5.3

Application Number: 92903819.8

Publication Number: 0519055

IPC: H04S 3/00

Language of the proceedings: EN

Title of invention:

Decoder for variable-number of channel presentation of multidimensional sound fields

Patentee:

DOLBY LABORATORIES LICENSING CORPORATION

Opponent:

Koninklijke Philips Electronics N.V.

Headword:

Decoder/DOLBY

Relevant legal provisions:

EPC Art. 84, 113(1)

EPC R. 67

Keyword:

"Opposition grounds - amendments"
"Substantial procedural violation (no)"
"Refund of the appeal fee (no)"

Decisions cited:

G 0009/91, G 0001/95, T 0301/87, T 0033/93

Catchword:

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Case Number: T 1052/00 - 3.5.3

D E C I S I O N
of the Technical Board of Appeal 3.5.3
of 24 March 2004

Appellant: Koninklijke Philips Electronics N.V.
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Representative: van der Kruk, Willem Leonardus
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Respondent: DOLBY LABORATORIES LICENSING CORPORATION
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Representative: Hoffmann, Eckart, Dipl.-Ing.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
1 August 2000 concerning maintenance of
European patent No. 0519055 in amended form.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. A. N. van der Voort
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. This appeal is against the decision of the Opposition Division finding European patent No. 0 519 055 in amended form to meet the requirements of the EPC. The opposition was filed under Article 100(a) EPC on the grounds that the subject-matter of the claims was not new or did not involve an inventive step (Articles 52(1), 54 and 56 EPC).
- II. The opponent lodged an appeal against the decision and conditionally requested oral proceedings. A statement of grounds of appeal was subsequently filed. In the statement of grounds the appellant (opponent) raised issues of lack of clarity under Article 84 EPC and alleged that in its decision the Opposition Division had committed a substantial procedural violation. Novelty and inventive step were not mentioned.
- III. The respondent (proprietor) filed a reply to the statement of grounds of appeal, rejecting the appellant's arguments, and also conditionally requested oral proceedings.
- IV. The parties were summoned by the Board to oral proceedings. In a communication accompanying the summons, the Board gave a preliminary opinion on the case.
- V. Two days before the oral proceedings, the appellant filed a letter informing the Board that he would not attend the oral proceedings.

VI. Oral proceedings were held on 24 March 2004 in the absence of the appellant. At the end of the oral proceedings the Chairman announced the Board's decision.

VII. Claim 1 as amended during the opposition procedure reads as follows:

"A decoder for decoding multi-channel audio signals representing a multi-dimensional sound field delivered by a plurality of delivery channels, each delivery channel carrying formatted information in the form of a non-linear representation of frequency domain transform coefficients, comprising:

*receiving means (116; 416) for receiving said plurality of delivery channels (102a-102d; 402a-402d),
deformatting means (104a-104d; 404a-404d)
responsive to said receiving means for deformatting said non-linear representation of transform coefficients of each delivery channel into a respective linear representation of said transform coefficients,
and*

synthesis means (112a-112b; 412) for applying a frequency-domain to time-domain transform to generate output signals in response to said linear representations of transform coefficients,

*characterized in that, interposed between said deformatting means and said synthesis means,
distribution means (108; 408) responsive to said deformatting means generates one or more intermediate signals, wherein at least one intermediate signal is generated from the summation of transform coefficients representing the same spectral frequencies of two or more of said linear representations, and said synthesis*

means generates a respective output signal in response to each of said intermediate signals."

VIII. In his written submissions, the appellant argued that from the description as amended during the opposition procedure it was clear that the feature of the decoder having a number of output signals which is smaller than the number of delivery channels was an essential feature of the invention. Since the claims did not include this feature, they were not clear and therefore did not satisfy Article 84 EPC. Moreover, this clarity objection arose out of the amendments made to the patent, since independent claim 2 as granted and a passage in the description (column 11, lines 38 to 47) had been deleted. Furthermore, the invention was not sufficiently disclosed, since the amended description only provided support for a decoder with the above-mentioned essential feature (Article 83 EPC).

Further, the appellant argued that a reimbursement of the appeal fee was justified since the Opposition Division had committed a substantial procedural violation; the opponent's right to be heard was violated in that he had not been given the opportunity to comment on a Board of Appeal decision which was cited by the Opposition Division and which formed the basis for not admitting an objection under Article 84 EPC as raised by the opponent.

IX. The respondent (proprietor) rebutted the appellant's arguments, submitting, *inter alia*, that the cancellation of granted claim 2 and the passage in the description (column 11, lines 38 to 47) had no effect

on the scope or interpretation of the remaining claims of the patent.

The parties' requests

- X. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked. Further, the appellant requested a reimbursement of the appeal fee.

- XI. The respondent (proprietor) requested that the appeal be dismissed.

Reasons for the Decision

- 1. *Amendments - Article 84 EPC*
 - 1.1 Article 102(3) EPC implies that amendments made to a patent during an opposition must be fully examined to determine whether the amendments meet the requirements of the EPC (see also G 9/91, point 19 of the reasons). It is however the established case law of the Boards of Appeal that Article 102(3) EPC does not allow objections to be based on Article 84 EPC if such objections do not arise out of the amendments made, see e.g. T 301/87 (point 3.8 of the reasons).

 - 1.2 In the present case, the Board notes that none of the claims as granted includes the feature the appellant considers to be essential (see point VIII). Further, in the Board's view, the description, irrespective of the amendments made during the opposition procedure, provides support for a decoder having a number of

presentation channels which is the same or larger than the number of delivery channels (see column 11, lines 30 to 37). Hence, if the present claims were to lack clarity (or support) due to the absence of the alleged essential feature, this would already have been the case for the patent as granted and, hence, would not have been a consequence of the amendments made to the patent during the opposition procedure.

1.3 The objection under Article 84 EPC is therefore inadmissible.

2. *Disclosure of the invention*

2.1 The objection under Article 83 EPC was raised for the first time in the appellant's letter received 22 March 2004. Since Article 83 EPC relates to applications rather than patents, this objection is understood by the Board as an objection pursuant to Article 100(b) EPC. It therefore constitutes a new ground for opposition.

2.2 Since the respondent (proprietor) did not give his consent to the introduction of this new ground into the appeal proceedings, it is not admitted (G 1/95, point 6 of the reasons).

3. *Reimbursement of the appeal fee*

3.1 Rule 67 EPC requires two conditions to be met for allowing a reimbursement of the appeal fee. In the present case, the first of these two requirements is not met since the appeal was found not allowable. This

is a sufficient reason for rejecting the request for reimbursement of the appeal fee.

- 3.2 Nevertheless, in view of the appellant's allegation that the Opposition Division had committed a substantial procedural violation, the Board would like to make the following observations. According to the minutes of the oral proceedings, in response to the objection raised by the opponent under Article 84 EPC, the Opposition Division informed the opponent that Article 84 EPC is not a ground for opposition in respect of subject-matter already contained in the granted claims. Further, as follows from the minutes, the opponent was given the opportunity to present his comments on the position taken by the Opposition Division.
- 3.3 In the Board's view, by doing so, the Opposition Division gave the essential legal and factual reasoning for not admitting the clarity objection and gave the opponent the opportunity to present his comments on this reasoning. Following T 33/93, see point 4 of the reasons, the citation of a Board of Appeal decision by the Opposition Division after having given the decision on the inadmissibility of the clarity objection was merely to confirm that the position taken by the Opposition Division was in line with the case law. It therefore cannot constitute a procedural violation.
- 3.4 The Board thus concludes that the Opposition Division acted in compliance with Article 113(1) EPC and did not commit a substantial procedural violation.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland