

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [X] To Chairmen
(D) [] No distribution

**Datasheet for the decision
of 11 September 2007**

Case Number: T 0539/05 - 3.5.02

Application Number: 97107837.3

Publication Number: 0808020

IPC: H03J 1/00

Language of the proceedings: EN

Title of invention:

An automatic channel selection device

Patentee:

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD

Opponent:

IGR GmbH & Co. KG.

Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step - main, first and second auxiliary requests -
(no) "

Decisions cited:

-

Catchword:

see point 3 of the reasons



Case Number: T 0539/05 - 3.5.02

D E C I S I O N
of the Technical Board of Appeal 3.5.02
of 11 September 2007

Appellant: MATSUSHITA ELECTRIC INDUSTRIAL CO.,LTD
(Patent Proprietor) 1006, Oaza Kadoma
Kadoma-shi, Osaka 571-0050 (JP)

Representative: Kügele, Bernhard
Novagraaf SA
25, Avenue du Pailly
CH-1220 Les Avanchets - Geneva (CH)

Respondent: IGR GmbH & Co. KG.
(Opponent) Bahnstrasse 62
D-40210 Düsseldorf (DE)

Representative: Eichstädt, Alfred
Maryniok & Eichstädt
Kuhbergstrasse 23
D-96317 Kronach (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 21 February 2005
revoking European patent No. 0808020 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: M. Ruggiu
Members: J.-M. Cannard
P. Mühlens

Summary of Facts and Submissions

I. The proprietor appealed against the decision of the opposition division revoking European patent No. 0 808 020.

II. The documents:

D1: Operating manual of Loewe television receivers "Farbf Fernsehgerät Planus 4563Z Planus 5472Z Bedienungsanleitung", pages 1 to 6, 9 to 22, 31 and 103, with pages 1 to 4 of a "colour television service manual Loewe Q2100",

D1-1 to D1-11: invoices for a television Planus 4572Z, and

two declarations by Wolfgang Maryniok dated 2 May 2002 and 11 March 2003,

considered during the proceedings before the opposition division, remain relevant to the present appeal.

III. With a letter dated 10 August 2007, the appellant filed sets of claims according to a main request and first and second auxiliary requests.

Claim 1 of the main request (which is identical with claim 1 of the patent as granted) reads as follows:

"An automatic channel selection device comprising:

an electronic tuner (1),

a tuner control means (2) controlling said electronic tuner (1),

an automatic channel selection control means (3) controlling said automatic tuner control means (2) to start automatic channel selection,

a memory means (4) exchanging tuning data within said automatic channel selection control means (3), and

an automatic channel selection judge-and-process means (5) connected to said automatic channel selection control means (3),

characterised in that the automatic channel selection device further comprises

a memory content judge-and-process means (6) connected to said memory means (4) checking the condition and the content of said memory means, and connected to said automatic channel selection judge-and-process means (5) which instructs said automatic channel selection control means (3) to control said automatic channel selection according to the checked result of conducted by said memory content judge-and-process means (6)."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the following is added at the end of the claim:

"wherein said memory content judge-and-process means checks the content memorized in said memory means for the initial condition, and the result of this check is transmitted to said automatic channel selection judge-and-process means."

Independent claim 2 of the second auxiliary request differs from claim 1 of the main request in that the following is added at the end of the claim:

"wherein said memory content judge-and-process means checks said memory means for the starting from the reset condition of said memory means, and the result of this check is transmitted to said automatic channel selection judge-and-process means."

IV. Oral proceedings were held before the Board on 11 September 2007.

V. The submissions of the appellant proprietor that are relevant to the present decision can be summarized as follows:

The device of the invention comprised a memory means storing tuning data and an automatic channel selection control means which activated an automatic channel selection only depending on the content of said memory means, which was determined by a memory content judge-and-process means. The device shown in figure 2D of the patent in suit, in which a keying operation by the user was required to start an automatic channel selection, was no longer an embodiment of the invention. Neither the memory content judge-and-process means checking the condition and content of the memory means, nor the automatic activation of the channel selection specified in claim 1 of the main request were disclosed in document D1, or suggested by its teaching.

The television receiver according to D1 needed memory means for storing initial data input by the user during

a manual presetting operation and other memory means for the tuning data. D1 did not disclose a television receiver which had a shipping bit stored in the tuning data memory means to indicate that the receiver was in an initial condition. When the receiver of D1 was shipped, the memory means containing the tuning data was empty and there was no point in checking its content for a shipping bit. In fact, in D1, an automatic activation of an automatic channel selection never occurred. The receiver of D1 displayed user-interactive menus and the channel selection had to be activated by the user in all cases. A user having just bought the television receiver was asked to start an automatic channel selection by pressing a button.

D1 did not suggest to store a shipping bit indicating an initial condition in the memory means of a television receiver because there were other possibilities to show an initial condition, as for instance subroutines or specific circuits. Even assuming that the receiver of D1 stored a shipping bit, the shipping bit itself only triggered the displaying of the question to the user whether automatic selection should start or not. The opponent based its attack on a speculative interpretation of D1.

The subject-matter of claim 1 of the first auxiliary request, according to which the memory content judge-and-process means checked the content memorized in the memory means for an initial condition, involved an inventive step for the same reasons as that of claim 1 of the main request.

As regarded claim 1 of the second auxiliary request, the appellant submitted that an initial condition was not an abnormal condition. The content of the memory means in the reset condition (independent claim 2 of the second auxiliary request) might be the same as the content of the memory means in the initial condition.

VI. The submissions of the respondent opponent that are relevant to the present decision can be summarized as follows:

Claim 1 of the main request lacked an inventive step having regard to the teaching of document D1 alone.

According to D1, the user had to select a language, a country and a norm when the television receiver was used for the first time. Since this "presetting" was performed only once, it was apparent that the receiver stored some form of shipping bit to indicate the initial (shipping) condition. It was obvious for reason of costs to store the shipping bit in memory means already present in the receiver, for instance those containing the tuning data, and to check the content of these memory means for the initial condition.

It would be obvious in order to simplify the first installation of the receiver of D1 to replace the manually controlled channel selection operation by a fully automatic channel selection control. Independently from that, the claimed invention was not restricted to a device in which an automatic channel selection operation was started when a shipping bit was recognized in the memory means. But, as appeared from paragraph [0020] of the description of the patent, claim 1 also covered

memory content judge-and-process means which instructed automatic channel control means to start an automatic channel selection operation after confirmation by the user of a displayed instruction. This manual control of the automatic channel selection was disclosed in D1.

The device according to claim 1 of the first auxiliary request, in which the memory content judge-and-process means checked the content of the memory means for an initial condition, lacked an inventive step for the same reasons as the device of claim 1 of the main request.

According to claim 1 of the second auxiliary request, the memory content judge-and-process means checked the content of the memory means for any abnormality. The meaning of this expression was so broad as to cover a shipping bit. The second auxiliary request did not satisfy the requirements of the EPC for the same reasons as the main request.

VII. The appellant (patentee) requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the set of claims filed as main request with the letter dated 10 August 2007, or on the basis of one of the sets of claims filed as first and second auxiliary requests with the letter of 10 August 2007.

VIII. The respondent (opponent) requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

Scope of claim 1 according to the main request

2. The automatic channel selection device according to claim 1 of the main request comprises *inter alia* a memory means (4), which exchanges tuning data with an automatic channel selection control means (3), and a memory content judge-and-process means (6), which is connected to said memory means (4) and checks the condition and the content of said memory means, and is connected to an automatic channel selection judge-and-process means (5) which instructs said automatic channel selection control means (3) to control an automatic channel selection according to the result of the check conducted by said memory content judge-and-process means (6).
 - 2.1 According to paragraphs [0015], [0021], and [0022] and figures 2A to 2C of the patent in suit, a flag (shipping bit) showing that the newly manufactured television receiver is in a shipping (initial) condition is written in the memory means 4 before it is shipped out. When the purchased television receiver is turned on, the content of the memory means is checked and, if the flag is in a condition of "1" or initial condition, it is rewritten into "0" and the automatic channel selection is started. The passage at column 4, lines 18 to 20 of the patent specifies a "flag condition showing its shipping (initial) condition which should be either "1" or "0"". Accordingly, the memory means 4 specified in claim 1, whose content is checked for an initial condition (see

claim 2), is not restricted to the memory cells of the device in which the tuning data are stored, but should be construed as embracing any memory means whose content may identify an initial and a non initial condition.

- 2.2 According to paragraph [0020] of the specification of the patent in the form revoked by the opposition division (i.e. with the amendment to the description filed with the letter of 9 March 2004), which relates to an embodiment of the invention, "said automatic channel selection judge-and-process means 5 instructs said automatic channel selection control means 3 to start the automatic channel selection work beside telling the user (TV viewer) to show that the content of display means 11 is in an initial condition" and "Recognizing this display on said display means 11, the user may input an instruction which is related to said automatic channel selection judge-and-process means 5 through a key input process means 8 by using operating key 7". The skilled person reading claim 1 in the light of the description has thus no reason to understand that the automatic channel selection judge-and-process means 5 **directly** instructs (i.e. instructs without any input from the user) the automatic channel selection control means 3 to control the automatic channel selection.

Claim 1 of the main request - Closest prior art

3. The Board has no reason to reconsider the view of the opposition division, which was not disputed during the appeal proceedings by the appellant, that documents D1, D1-1 to D1-11 and the declarations by Wolfgang Maryniok relate to a public prior use of a Loewe television

receiver Planus 4572Z and that this public prior use forms the closest prior art.

4. D1 is an excerpt of an operating manual of a television receiver. On the basis of D1, the division opposition came to the conclusion that the prior use receiver included the features recited in the preamble of claim 1 of the main request. This finding of the opposition division was not disputed by the appellant.

4.1 According to the decision under appeal (page 3, second paragraph), the prior use receiver discloses an automatic channel selection judge-and-process means connected to the automatic channel selection control means to control an automatic channel selection, "since in D1 the tuning process is only carried out under certain circumstances, when for example as a result of the programming process at the first turn on of the TV as described on page 9, after choosing the language the key X is pressed". The automatic channel selection judge-and-process means and its manual control, as implied by the disclosure of D1, therefore disclose the "automatic channel selection judge-and-process means (5) which instructs said automatic channel selection control means (3) to control said automatic channel selection" specified in claim 1, which, when read in the light of the description, covers instructing the automatic channel selection control means when an input to the automatic channel selection judge-and-process means is received from the user (*supra* 2.2).

4.2 The operating manual D1 does not disclose a memory content judge-and process means which is connected to the memory means for checking the condition and content

of said memory means, and connected to the automatic channel selection judge-and process means for controlling an automatic channel selection according to the result of the check. The device specified in claim 1 of the main request does contain such a memory content judge-and process means and thus only differs from the disclosure of D1 in this respect.

Claim 1 of the main request - Inventive step

5. According to D1, the presetting operation is performed only once, when the receiver is turned on for the first time. This implies that each time the receiver is turned on, a check has to be conducted to recognize whether a presetting operation has already been carried out or has to be performed. Thus, starting from D1, the objective technical problem addressed by the invention can be seen as providing some means for performing this check, because D1 does not disclose such means.

5.1 Beside memory means which contains the tuning data, the receiver to which D1 relates must comprise other memory means in which preset data depending on the use and location of the purchased receiver (e.g. the language of the menus and the norms of the channels to be received) are stored during the initialisation step of the receiver. When the television receiver of D1 is shipped, the memory means for storing the preset data are empty because the receiver has never been used. This fact is not disputed by the appellant (statement of grounds of appeal, page 2, first paragraph). After the receiver has been initialised, said means are no longer empty. The skilled person, aware of D1 and wishing to judge whether the receiver is in an initial condition or not, thus

would consider means for judging whether the memory means of the receiver in which the preset data are to be written during the presetting operation are empty or not.

- 5.2 No difference can be seen between the memory means of the prior use receiver which contain both the preset and the tuning data and the "memory means (4) exchanging tuning data" according to claim 1, when these memory means (4) are construed in the light of the description of the patent in suit (*supra* 2.1). Accordingly, the skilled person starting from D1 would arrive in an obvious way at an automatic channel selection device comprising all the features specified in claim 1, and in particular at a memory content judge-and-process means which checks the condition and the content of the memory means and is connected to the automatic channel selection judge-and-process means for controlling an automatic channel selection according to the result of the check. Accordingly, the subject-matter of claim 1 according to the main request does not involve an inventive step (Article 56 EPC) and the main request is not allowable.

First and second auxiliary requests

6. Claim 1 of the first auxiliary request differs from claim 1 of the main request only in that it specifies: "wherein said memory content judge-and-process means checks the content memorized in said memory means for the initial condition, and the result of this check is transmitted to said automatic channel selection judge-and-process means". As explained in the foregoing, it is obvious to the skilled person aware of D1 to check the content of the memory means exchanging tuning data for

an initial condition. Thus, claim 1 of the first auxiliary request does not involve an inventive step (Article 56 EPC) for the same reasons as claim 1 of the main request.

7. Independent claim 2 of the second auxiliary request differs from claim 1 of the main request only in that it specifies: "wherein said memory content judge-and-process means checks said memory means for the starting from the reset condition of said memory means, and the result of this check is transmitted to said automatic channel selection judge-and-process means". The appellant did not dispute the Board's view that the content of the memory means 4 of the claimed device when starting from the reset condition of said memory means does not differ from the initial condition content of said memory means. Accordingly, claim 2 of the second auxiliary request does not involve an inventive step (Article 56 EPC) for the same reasons as claim 1 of the main request.
8. As none of the appellant's requests is suitable for maintaining the patent, the appeal has to be dismissed.

Order

For these reasons it is decided that :

The appeal is dismissed.

The Registrar:

The Chairman:

U. Bultmann

M. Ruggiu