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Datasheet for the decision of 5 May 2017

Case Number: T 1151/12 - 3.4.01

Application Number: 06769319.2

Publication Number: 1920439

IPC: G10L19/00

Language of the proceedings: EN

Title of invention:
METHOD FOR GENERATING ENCODED AUDIO SIGNAL AMD METHOD FOR PROCESSING AUDIO SIGNAL

Applicant:
LG Electronics Inc.

Headword:

Relevant legal provisions:
EPC 1973 Art. 83
EPC R. 103

Keyword:
Sufficiency of disclosure - (no)
Reimbursement of appeal fee - (no)

Decisions cited:
T 0292/90, T 0052/90

Catchword:

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Case Number: T 1151/12 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 5 May 2017

Appellant: (Applicant)	LG Electronics Inc. 20, Yoido-dong Youngdungpo-gu Seoul 150-721 (KR)
Representative:	Katérle, Axel Wuesthoff & Wuesthoff Patentanwälte PartG mbB Schweigerstraße 2 81541 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 25 November 2011 refusing European patent application No. 06769319.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Assi
Members:	P. Fontenay
	J. Geschwind

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division to refuse European patent application No. 06 769 319.

The decision was remitted to the post on 25 November 2011.

II. In the "*Reasons*" for the decision, the examining division held that the claimed subject-matter did not comply with the requirements of Article 83 EPC in combination with Rule 42(1)(e) EPC. Concretely, the examining division held that the application did not contain sufficient information to carry out the step of "*generating a channel of a multi-channel audio signal according to the basic configuration information and the extension configuration information included in the encoded audio signal*", as recited in independent claims 1 and 5 of the request then on file.

In this respect, the examining division held that document A2 (Audio Engineering Society, Convention Paper 6447, 18th Convention in Barcelona (Spain); 28-31 May 2005) did not constitute evidence for common general knowledge. Therefore, it disregarded this document for the assessment under Article 83 EPC. Even if this document would be considered as representing common general knowledge, its content did not disclose the information actually missing in the present patent application.

III. On 2 February 2012, the appellant (applicant) filed a notice of appeal. The prescribed appeal fee was paid on the same date.

The statement setting out the grounds of the appeal was filed on 4 April 2012.

IV. With the statement of grounds, the appellant requested that the decision of the first instance be set aside in its entirety and a patent be granted on the basis of a set of enclosed claims 1 to 12.

The appellant further requested that the appeal fee be reimbursed according to Rule 103(1) EPC due to a failure of the examining division to provide adequate reasoning in the decision to refuse the application.

V. In accordance with the appellant's request, a summons to attend oral proceedings was issued.

VI. In a communication of the Board pursuant to Article 15(1) RPBA issued on 14 March 2017, the appellant was informed of the provisional opinion of the Board.

In particular, no substantial procedural error could be identified in the approach followed by the examining division. Therefore, the reimbursement of the appeal fee did not appear to be equitable.

Concerning the objection under Article 83 EPC 1973, the Board shared, for the essential, the analysis developed by the examining division.

VII. In its reply dated 20 April 2017, the appellant informed the Board that it did not intend to file further submissions and that it would not attend oral proceedings.

The appellant further requested partial refund of the appeal fee according to Rule 103(2) EPC.

VIII. Oral proceedings before the Board took place on 5 May 2017 in the absence of the appellant's representative.

IX. Claim 1 of the appellant's request reads:

"*1. A method for processing an audio signal comprising:*

receiving an encoded audio signal including basic configuration information requisite for a multi-channel audio coding process, and extension configuration information being selectively required for the multi-channel audio coding process; and

generating a channel of a multi-channel audio signal according to the basic configuration information and the extension configuration information included in the encoded audio signal,

wherein:

the basic configuration information includes fixed channel configuration information indicating a single channel configuration information from among several pre-established channel configuration information,

the extension configuration information includes arbitrary channel configuration information identified by a type identifier, the type identifier indicating a presence or an absence of a channel division, and

the arbitrary channel configuration information extends the number of channels of the multi-channel audio signal, the multi-channel audio signal generated according to the fixed channel configuration information."

Claims 2 to 4 depend on claim 1.

Independent claim 5 reads:

"*5. An apparatus for processing an audio signal, comprising:*

an audio signal receiving unit receiving an encoded audio signal including basic configuration information requisite for a multi-channel audio coding process, and extension configuration information being selectively required for the multi-channel audio coding process; and,

a channel configuration unit generating a channel of a multi-channel audio signal according to the basic configuration information and the extension configuration information included in the encoded audio signal,

wherein:

the basic configuration information includes fixed channel configuration information indicating a single channel configuration information from among several pre-established channel configuration information,

the extension configuration information includes arbitrary channel configuration information identified by a type identifier, the type identifier indicating a presence or an absence of a channel division, and

the arbitrary channel configuration information extends the number of channels of the multi-channel audio signal, the multi-channel audio signal generated according to the fixed channel configuration information."

Claims 6 to 12 depend on claim 5.

Reasons for the Decision

1. *Admissibility*

The appeal meets the requirements of Articles 106 to 108 EPC and Rule 99 EPC. It is thus admissible.

2. *Reimbursement of the appeal fee (Rule 103 EPC)*

2.1 *Rule 103(1) EPC*

2.1.1 With the statement of grounds, the appellant requested reimbursement of the appeal fee under Rule 103(1) EPC. In the appellant's view, the decision of the examining division was not correct because it relied on a reasoning which was basically erroneous. Although the claims objected to did not contain any reference to the feature of "*configuration elements*", the examining division had relied on the fact that the skilled person in the art was not taught how to obtain the "*configuration elements*" of the matrices disclosed with regard to Figure 4. Moreover, the alternative embodiment of the invention disclosed with regard to Figures 2 and 3 did not contain any reference to said "*configuration elements*".

2.1.2 Rule 103(1)(a) EPC specifies that "*The appeal fee shall be reimbursed in full ... where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation".*

Irrespective of the fact that the requirements of Article 83 EPC are not met, so that the appeal is not allowable (cf. point 3 below), a substantial procedural violation cannot be recognised in the approach followed by the examining division.

2.1.3 It is underlined that Article 83 EPC 1973 explicitly refers to the European patent application as source of information in order to carry out the claimed invention. It is thus expected from the examining

division raising an objection of lack of sufficiency of disclosure that it expounds on the grounds why the information disclosed in the application, considered as a whole, is not sufficient to carry out the claimed invention. It is a generally accepted principle, elaborated on the reference in Article 83 EPC 1973 to the person skilled in the art, that the teaching of a patent application is to be construed in the light of common general knowledge in the technical field. It is therefore the task of the examining division which raises an objection of lack of sufficiency to verify that the information allegedly missing does not form part of this common knowledge.

This approach indeed reflects what the examining division did under the present circumstances when it ruled that the application did not contain sufficient information to carry out the step recited in claim 1 of "*generating a channel of a multi-channel audio signal according to the basic configuration information and the extension configuration information included in the encoded audio signal*".

In the decision, the examining division referred, more particularly, to the embodiment of Figure 4 and noted that the concepts of "*configuration elements*", which are essential for the determination of the two matrices m1 and m2 referred to in the embodiment of Figure 4, where not sufficiently defined. These findings appear to address the comments of the applicant in its reply of 27 September 2011. Faced with the objection of the examining division under Article 83 EPC and Rule 42(1)(e) EPC, the appellant referred, in said letter of reply, more specifically to the passage of the description on page 28, line 13 to page 29, line 1, concerning the embodiment of Figure 4. Said reply,

however, did not explain how the embodiments of Figures 2 and 3 would permit to carry out the step in question. There was accordingly no need for the examining division to further elaborate on the relevance of these embodiments which were not considered, even by the appellant itself, as particularly relevant for the issue at stake.

Since document A2 provided by the appellant was not considered to constitute evidence of common general knowledge, the examining division concluded that the application, as a whole, did not permit the person skilled in the art to carry out the claimed subject-matter.

2.1.4 The reasoning relied upon in the decision to refuse the application is both logical and in line with established case law. In contrast to the appellant's view, it cannot be equated with unsubstantiated allegations (cf. T 0292/90, unpublished, point 2; T 0052/90, unpublished, point 2).

2.1.5 No procedural error can therefore be recognised in the reasoning adopted by the examining division. The reimbursement of the appeal fee must therefore be refused for this sole reason, irrespective of whether the appeal is considered allowable or not.

2.2 *Rule 103(2) EPC*

2.2.1 In its reply of 20 April 2017, the appellant also requested partial refund of the appeal fee under Rule 103(2) EPC.

Rule 103(2) EPC specifies that "*The appeal fee shall be reimbursed at 50% if the appeal is withdrawn [...]*".

2.2.2 The appellant's reply of 20 April 2017 informed the Board of the appellant's intention not to attend oral proceedings scheduled for 5 May 2017, but does not contain any statement regarding withdrawal of the appeal.

2.2.3 The appellant's request for partial refund of the appeal fee is thus devoid of any legal basis and is therefore rejected.

3. *Sufficiency of disclosure (Article 83 EPC 1973)*

3.1 In parallel case T 1155/12, similar objections to those raised in the present case regarding sufficiency of disclosure were raised. In reply, the appellant filed a copy of working draft standard ISO/IEC JTC 1/SC 29/WG 11 N7136 (text of Working draft for Spatial Audio Coding (SAC)), as evidence of common general knowledge.

During the oral proceedings held for the present case, it was considered whether said document, which appeared to be also relevant for the present case, should be introduced, *ex officio,* into the present proceedings. The Board decided not to introduce said document into the present appeal proceedings for the following reasons.

It was noted, firstly, that the appellant had not requested the introduction of said document in the present proceedings and has not even mentioned it in its submissions. Secondly, the public availability of said document at the priority date of the application appeared questionable in view of the fact that it is a working draft. Thirdly, although relevant, the content

of said document did not appear *prima facie* to be conclusive for the issue to be decided.

3.2 Contrary to the appellant's view, the claims alone do not contain sufficient information to carry out the invention.

It is acknowledged that independent claims 1 and 5 recite that both basic configuration information and extension configuration information are required for generating a channel of a multi-channel audio signal. However, the way this information is to be used, in practice, to generate the multi-channel audio signal does not derive from the claims' wording, either explicitly or implicitly. In this respect, the feature in claims 1 and 5 according to which "*the arbitrary channel configuration information extends the number of channels of the multi-channel audio signal, the multi-channel audio signal generated according to the fixed channel configuration information*" does not provide any detail as to the actual implementation of the recited step.

3.3 The description does not include sufficient information for the skilled person to reproduce the claimed subject-matter either.

The appellant submitted that relevant information was not limited to the embodiment of Figure 4, but that the content of the description relating to Figures 2 and 3 was also essential to carry out the invention.

The fact that said embodiments may indeed constitute a valuable source of information is not contested. These embodiments, however, do not describe how the multi-channel audio signal is to be elaborated on the basis

of the available information. Concretely, the description does not disclose how, for example, the sequence of "*1*" and "*0*" for the division identifiers contributes, in practice, to the generation of the various output channels. The information actually required extends beyond the mere indication that a "*1*", for example, is used to signal that the channel concerned is to be divided. It namely also encompasses the teaching required to define how, on the basis of the information provided by the sequence of division identifiers, the audio data are to be split between the generated channels.

Concerning, more specifically, the embodiment disclosed with regard to Figure 4, it is not straightforward how the matrices m1 and m2, and the configuration elements they contain, contribute to the elaboration of the various output channels. In this respect, the skilled person does not even appear to have basic guidelines as to how the information contained in the matrices would contribute, eventually, to the elaboration of different flows of audio data (channels). The relationship which exists between the output channels and the signals initially encoded before downmixing is not even specified in the application.

3.4 For these reasons, the skilled person is not in a position to reproduce the claimed invention on the basis of the present patent application and common general knowledge. In this respect, there is no reason to challenge the findings of the examining division regarding the fact that document A2 did not provide evidence for common general knowledge.

Consequently, the application does not meet the requirements of Article 83 EPC 1973.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

R. Schumacher G. Assi

Decision electronically authenticated