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Datasheet for the decision of 14 May 2018

Case Number: T 0694/13 - 3.5.04

Application Number: 03751154.0

Publication Number: 1563676

IPC: H04N1/00

Language of the proceedings: EN

Title of invention:
CONTINUE RECORDING CHANNEL FEATURE FOR PERSONAL VIDEO RECORDER

Applicant:
Koninklijke Philips N.V.

Headword:

Relevant legal provisions:
EPC 1973 Art. 56

Keyword:
Inventive step - (no - foreseeable disadvantageous modification of the closest prior art)

Decisions cited:

Catchword:

Europäisches Patentamt
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Beschwerdekammern

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Case Number: T 0694/13 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 14 May 2018

Appellant: (Applicant)	Koninklijke Philips N.V. High Tech Campus 5 5656 AE Eindhoven (NL)
Representative:	de Haan, Poul Erik Philips International B.V. Philips Intellectual Property & Standards High Tech Campus 5 5656 AE Eindhoven (NL)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 17 January 2013 refusing European patent application No. 03751154.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	C. Kunzelmann
Members:	M. Paci
	B. Müller

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division refusing European patent application No. 03751154.0, published as international patent application WO 2004/045196 A2.

II. The documents cited in the decision under appeal include:

D1: US 2002/0009285 A1.

III. The decision under appeal was based on the grounds that the subject-matter of claim 1 according to each of the main, first and second auxiliary requests then on file did not involve an inventive step (Article 56 EPC) in view of prior-art document D1.

IV. In the notice of appeal the appellant requested that the decision be set aside and a European patent be granted. Oral proceedings were requested as a precaution.

V. In the statement of grounds of appeal the appellant identified the claims of the main and sole request as those of the main request underlying the decision under appeal.

VI. In a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA, OJ EPO 2007, 536) annexed to the summons to oral proceedings, the board explained to the appellant why it was inclined to regard the subject-matter of claim 1 as not involving an inventive step in view of prior-art document D1.

VII. The appellant did not reply to the objections in the board's communication. However, in a letter dated 12 April 2018, it requested "a decision on the file as it stands" and withdrew its request for oral proceedings.

VIII. Oral proceedings were held on 14 May 2018. The duly summoned appellant did not attend.

At the oral proceedings, the chairman noted that it appeared from the file that the appellant had requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request underlying the decision under appeal.

At the end of the oral proceedings, the chairman announced the board's decision.

IX. Claim 1 according to the appellant's sole request reads as follows:

"A media receiving/outputting device (A) comprising:
reception means (50) for receiving a media signal;
first tuning means (52) for tuning the media signal to a first channel selected for outputting;
output means (70) for viewing the first channel; and
second tuning means (54) for tuning the media signal to a second channel;
characterized in that it further comprises:
mode setting means (60) for effecting a setting of the device to a mode, said mode being selected from a first mode and a second mode;
storage means (20) for storing a valid channel indicator in an allotted location (24) when the device

is set to the second mode, said channel indicator identifying the second channel of the media signal;

detecting means (10) for determining if the device is in the first mode or the second mode; and,

routing means (30) for routing to a buffer on a data storage device one of: (i) the first channel, when the device is in the first mode; and, (ii) the second channel, when the device is in the second mode."

X. The examining division's reasons for the decision under appeal relevant to the present decision may be summarised as follows:

Document D1, which represented the closest prior art, disclosed all the features of claim 1 except the following distinguishing features (see points 2.1 and 2.2 of the Reasons):

(1) mode setting means for effecting a setting of the device to a mode, said mode being selected from a first mode and a second mode;
(2) storage means for storing a valid channel indicator in an allotted location when the device is set to the second mode, said channel indicator identifying the second channel of the media signal;
(3) detecting means for determining if the device is in the first mode or the second mode; and
(4) routing means for routing to a buffer on a data storage device one of: (i) the first channel, when the device is in the first mode; and, (ii) the second channel, when the device is in the second mode.

Regarding the above feature (4), the examining division also pointed out that the "second mode" itself was known from D1 (see point 2.3 of the Reasons).

The "first mode" of claim 1, in which the currently viewed channel is buffered, was well known in media receiving devices including a single tuner, as acknowledged in paragraph [0012] of D1. Therefore, the objective technical problem could be formulated as "how to achieve a combination of the first and second modes" (see points 2.4 and 2.6 of the Reasons).

When confronted with this problem, the skilled person would have considered various design options and would have thought of adding the routing means and the mode management means of distinguishing features (1) to (4) without the need for an inventive step (see point 2.4 of the Reasons).

Hence the subject-matter of claim 1 of the main request underlying the decision under appeal did not involve an inventive step in view of prior-art document D1.

XI. The appellant's arguments as to inventive step in view of prior-art document D1 may be summarised as follows:

The "first mode" of claim 1, according to which the currently viewed channel is buffered, was mentioned in D1 as a property that was unavoidable for a device with a single tuner, but undesirable in a device with more than one tuner, such as the device of D1.

The examining division's objective technical problem was therefore not correct because it contained a pointer to the solution, i.e. that both the "first mode" and "second mode" should be provided in a device with more than one tuner.

Instead, the correct formulation of the objective technical problem should be "how to achieve an

alternative media/receiving device and method of operation of a media receiving/outputting device".

The skilled person would not have wanted to use said "first mode" in the device of D1 because, as explained in paragraphs [0011] to [0013] of D1, a change of channel would have led to a loss of recorded data in the program of interest, e.g. a pay-per-view event. Since D1 aimed at avoiding such a loss, the skilled person would not have had an incentive to introduce the "first mode" as defined in claim 1.

Accordingly, the subject-matter of claim 1 involved an inventive step in view of D1.

Reasons for the Decision

1. The appeal is admissible.

The invention

2. The application concerns essentially a personal video recorder having two tuners. The recorder can be operated in two selectable modes. In the first mode, the channel which is output to a television (i.e. the viewed channel) is recorded. In the second mode, the user designates a particular channel as being of predominant interest, and this channel is recorded even if the user temporarily selects a different channel for viewing. In the second mode, one tuner is used for recording, and the other tuner for outputting the viewed channel to the television.

Inventive step - Article 56 EPC 1973

3. Closest prior art and distinguishing features

The examining division held that document D1 represented the closest prior art and that it disclosed a media receiving/outputting device which functioned in the "second mode" recited in claim 1. This known device had all the features stated in claim 1, except the following distinguishing features:

(1) mode setting means for effecting a setting of the device to a mode, said mode being selected from a first mode and a second mode;
(2) storage means for storing a valid channel indicator in an allotted location when the device is set to the second mode, said channel indicator identifying the second channel of the media signal;
(3) detecting means for determining if the device is in the first mode or the second mode; and
(4) routing means for routing to a buffer on a data storage device one of: (i) the first channel, when the device is in the first mode; and, (ii) the second channel, when the device is in the second mode.

Regarding the above feature (4), the examining division also pointed out that the "second mode" itself was known from D1.

The board concurs with the above findings and notes that the appellant did not dispute them in the statement of grounds of appeal.

4. Objective technical problem

The examining division considered that the "first mode", in which the currently viewed channel is buffered, was well known in media receiving devices including a single tuner, as acknowledged in paragraph [0012] of D1, and that, therefore, the objective technical problem was "how to achieve a combination of the first and second modes".

The appellant pointed out that the "first mode", in which the currently viewed channel is buffered, was only mentioned in D1 as a property that was unavoidable for a device with a single tuner, but undesirable in the device of D1 which had more than one tuner.

The appellant therefore submitted that the examining division's objective technical problem was not correct because it contained a pointer to the solution.

According to the appellant, the correct formulation of the objective technical problem should have been "how to achieve an alternative media/receiving device and method of operation of a media receiving/outputting device".

The board agrees with the appellant that the "first mode", in which the currently viewed channel is buffered (even if the user switches to another channel), is mentioned in D1 as inevitable in a device with a single tuner, but nevertheless problematic (see paragraph [0012] of D1). The board thus concurs with the appellant that D1 does not disclose that this "first mode" should also be available in the device of D1, which comprises more than one tuner.

Hence the board regards the appellant's formulation of the objective technical problem as the correct one because it does not contain a pointer to the solution (i.e. providing both the "first mode" and the "second mode" in a device with more than one tuner).

5. Obviousness

The examining division argued that the skilled person would have considered various design options and would have thought of adding the routing means and the mode management means of distinguishing features (1) to (4) without the need for an inventive step.

The appellant submitted that the skilled person would not have wanted to use the "first mode" in the device of D1 because, as explained in paragraphs [0011] to [0013] of D1, a change of channel would have led to a loss of recorded data in the program of interest, e.g. a pay-per-view event.

The board concurs with the appellant that the "first mode" has the known disadvantage that even a brief change of channel initiated by the user would cause a loss of recorded data in the program broadcast on the original channel, which may be the program of interest to the user. However, the board notes that this same disadvantage also exists in the device of present claim 1. Indeed, the application as filed does not disclose any advantage of this "first mode"; it merely identifies it as the "normal operating mode" in which the personal video recorder operates essentially like a known or conventional personal video recorder (see from page 6, line 17 to page 7, line 7). It is true that one could argue that there is an advantage in giving the user the freedom to select between the "first mode" and

the better "second mode", just in case the user might prefer to buffer everything viewed while changing between channels, rather than buffering only the channel of interest. However, in the board's view this advantage would have been both predictable and obvious to the skilled person.

According to the established jurisprudence of the boards of appeal, foreseeable disadvantageous modifications of the closest prior art which are not compensated by an unexpected technical advantage cannot contribute to the presence of an inventive step, irrespective of whether the skilled person would have wanted to make these modifications (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, section I.D.9.18.1).

Based on this jurisprudence, the board considers that distinguishing features (1), (3) and (4) cannot contribute to the presence of an inventive step. As to distinguishing feature (2), the board regards it as obvious to the skilled person that information (the "valid channel indicator" in claim 1) identifying the channel to be continuously buffered in the second mode must be stored somewhere in a memory for the device to know which channel to buffer.

6. Conclusion

For the above reasons, the board finds that the subject-matter of claim 1 does not involve an inventive step when starting from document D1 as closest prior art.

Accordingly, the appellant's sole request is not allowable, so that the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

K. Boelicke C. Kunzelmann

Decision electronically authenticated