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Datasheet for the decision of 16 April 2019

Case Number: T 1429/15 - 3.5.03

Application Number: 06124855.5

Publication Number: 1777829

IPC: H04B1/20, G06F3/16

Language of the proceedings: EN

Title of invention:
Interactive sound reproducing

Patent Proprietor:
Bose Corporation

Opponent:
Spreepatent Schutzrechtsverwertung und Innovationstransfer GmbH

Headword:
Interactive sound reproducing device/BOSE

Relevant legal provisions:
EPC Art. 100(c)

Keyword:
Grounds for opposition - subject-matter extends beyond content of earlier application (yes)

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Case Number: T 1429/15 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 16 April 2019

Appellant: (Opponent)	Spreepatent Schutzrechtsverwertung und Innovationstransfer GmbH Rudower Chaussee 29/31 12489 Berlin (DE)
Representative:	Abel & Imray Westpoint Building James Street West Bath BA1 2DA (GB)
Respondent: (Patent Proprietor)	Bose Corporation The Mountain Framingham, MA 01701-9168 (US)
Representative:	Peterreins Schley Patent- und Rechtsanwälte Hermann-Sack-Strasse 3 80331 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 15 May 2015 rejecting the opposition filed against European patent No. 1777829 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	F. van der Voort
Members:	K. Schenkel
	J. Geschwind

Summary of Facts and Submissions

I. This case concerns an appeal filed by the opponent (appellant) against the decision of the opposition division to reject its opposition against European patent No. 1 777 829. This patent relates to a divisional application relating to a parent application with publication No. EP 1 198 070 A2.

II. The opposition was based on the grounds for opposition pursuant to Article 100(a), (b) and (c) EPC.

III. In its statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and that the patent be revoked.

IV. In its reply, the respondent (patent proprietor) requested that the appeal be dismissed.

V. Both parties conditionally requested oral proceedings.

VI. In a communication following a summons to oral proceedings, the board gave its preliminary opinion with respect to the grounds for opposition pursuant to Article 100(a), (b) and (c) EPC.

VII. In response to the board's communication, by letter dated 1 March 2019, the respondent withdrew its request for oral proceedings and informed the board that it would not attend the oral proceedings. It made no substantive comments on the board's preliminary opinion.

VIII. The appellant, by letter dated 19 March 2019, also withdrew its request for oral proceedings and, by

letter dated 15 April 2019, informed the board that it would not attend the oral proceedings.

IX. Oral proceedings took place on 16 April 2019 in the absence of both the appellant and the respondent.

The appellant (opponent) requested in writing that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested in writing that the appeal be dismissed.

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

X. Claim 1 reads as follows:

"A sound reproduction device (10) for interfacing with a computer (20) having access to a plurality of audio sources including at least digitally encoded music files stored on the computer and audio signals from a network connected to the computer, the sound reproduction device (10) comprising
an enclosure containing
audio signal processing circuitry (14) for producing audio signals,
a powered speaker (18) for producing audible sound from the audio signals, control circuitry (16) for controlling the audio processing circuitry; and
a connector (49, 51, 66) for connecting the sound reproduction device (10) externally to the computer for providing audio signals from the digitally encoded music files stored on the computer or audio signals received from sources connected to a computer network to which the computer is connected, the connector

further for providing control signals from the control circuitry, and wherein the connector includes a first signal path (50, 64) connected to the control circuitry (16) and a second signal path (62, 68) connected to the audio signal processing circuitry (14); and
a remote control device (17) for transmitting remote commands to the control circuitry (16), said remote control device (17) being capable of producing a first control signal that is received at the control circuitry (16) and controls operation of the sound reproduction device, and a second control signal that is received at the control circuitry (16) and is passed by said control circuitry through said first signal path (50,64) to control the selection of said digitally encoded music files or said audio signals for reproduction through said second signal path (62, 68)."

Reasons for the Decision

1. Claim 1 as granted - Article 100(c) EPC

1.1 Claim 1 relates to a sound reproduction device for interfacing with a computer having access to multiple audio sources including digitally encoded music files stored on the computer and audio signals from a network connected to the computer. The sound reproduction device is connected to the computer via a first signal path and a second signal path.

1.2 In particular, the sound reproduction device of claim 1 includes a remote control device for transmitting remote commands to a control circuitry of the sound reproduction device, the remote control device being capable of producing a first control signal that is received at the control circuitry and controls the operation of the sound reproduction device, and a

second control signal that is received at the control circuitry and is passed by the control circuitry through the first signal path to control the selection of the digitally encoded music files or the audio signals for reproduction through the second signal path.

1.3 The appellant argued that the patent extended beyond the content of both the application as filed and the earlier application as filed. *Inter alia*, the feature of a remote control capable of producing a second control signal which essentially is passed through the first signal path to the computer in order to control the selection of digitally encoded music files or audio signals was not originally disclosed.

1.4 In its reply to the statement of grounds of appeal, the respondent quoted a sentence on page 8, lines 18 and 19, of the parent application as filed, which reads as follows:

"For convenience, recorded units and assemblages of recorded units are referred to as "music files" even though the recorded units are not necessarily recordings of music".

It argued that both alternatives in the disputed feature, i.e. digitally encoded music files and audio signals, required communication with the computer to reproduce audio stored on the computer or received from sources connected to the computer.

The respondent further referred to claim 22 and the corresponding disclosure on page 2, lines 8 to 16, and quoted the sentence in lines 14 to 16, which reads as follows:

"In the event that the one received control command is not decodable or is not executable by the sound reproduction device, the method includes transmitting the encoded control command to the computer system".

From this, it argued, it was clear that it was relevant whether control commands were intended for execution by the sound reproduction device or for execution by the computer system in order to control one or the other.

1.5 The board notes that the above-cited sentence on page 2 of the description and claim 22, which essentially includes the same sentence, each state that control commands which are not decodable or executable by the sound reproducing device are forwarded to the computer system. Hence, this does not provide a basis for generally forwarding a control signal in order to control the selection of music files or audio signals. The respondent argued that it was relevant whether a control signal was intended for controlling either the sound reproduction device or the computer system. The board notes however that a control signal which is not executable or decodable by the sound reproduction device and a control signal for selecting a file or an audio signal need not be the same. For example, the sound reproduction device may decode the remote control's control signal for selecting a music file or an audio signal, but nevertheless forward it. Further, a control signal which is not decodable or executable by the sound reproduction system may also not relate to the selection of a music file or an audio signal.

The board further notes that claim 1 refers to passing a control signal which has been received from the remote control device, which may be understood as

forwarding the control signal as transmitted by the remote control. The passages indicated by the respondent, however, refer to the transmission of a control command, which leaves it open whether or not the command is encoded in the control signal.

The board notes that above objections were already raised in the board's communication and that the respondent did not submit any substantive comments in its reply.

1.6 The board therefore concludes that claim 1 as granted comprises subject-matter extending beyond the content of the earlier application as filed and that the ground for opposition pursuant to Article 100(c) EPC prejudices the maintenance of the patent as granted.

2. There being no allowable request, it follows that the patent is to be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Rauh F. van der Voort

Decision electronically authenticated