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**Datasheet for the decision
of 25 November 2019**

Case Number: T 1232/16 - 3.5.03

Application Number: 05006736.2

Publication Number: 1585240

IPC: H04H7/00

Language of the proceedings: EN

Title of invention:

System and method for communication among audio-related device

Applicant:

HARMAN INTERNATIONAL INDUSTRIES, INCORPORATED

Headword:

Audio-related device/HARMAN

Relevant legal provisions:

EPC Art. 54, 111(1)

EPC R. 111(2)

Keyword:

Substantial procedural violation (yes) - decision not reasoned

Novelty (yes) - claim 1

Remittal (yes)

Decisions cited:

G 0010/93, T 0278/00

Catchword:



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Case Number: T 1232/16 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 25 November 2019

Appellant: HARMAN INTERNATIONAL INDUSTRIES, INCORPORATED
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 29 October 2015
refusing European patent application No.
05006736.2 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman F. van der Voort
Members: T. Snell
P. Guntz

Summary of Facts and Submissions

I. This case concerns the appeal filed by the applicant against the decision of the examining division refusing European patent application no. 05006736.2. Inter alia, it was held that claim 1 of the main request was not clear (Article 84 EPC), that the subject-matter of claim 1 was not new (Articles 52(1) and 54 EPC), and that the subject-matter of claim 40 did not involve an inventive step (Article 56 EPC). With respect to novelty, the examining division referred to the following prior art documents:

D2 = US 6 556 219 B1; and
D3 = EP 0 485 252 A.

II. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a main request or, in the alternative, of auxiliary request I or II, all requests as filed with the statement of grounds of appeal.

III. Claim 1 of the main request reads as follows:

"An audio system comprising:

an audio-related device that includes a hierarchical audio node structure indicative of the functionality of the audio-related device, where the hierarchical audio node structure includes components representative of changeable parameters in the audio-related device; and

a performance equipment manager communicates with the audio-related device and provides a user interface to monitor and control the changeable parameters of the audio-related device;

where the performance equipment manager further generates and transmits a subscribe message to the audio-related device, the subscribe message comprising specification of one or more of the changeable parameters and a request to receive a value of the specified one or more changeable parameters upon a change in the value; and

where the audio-related device subscribes the performance equipment manager to only the one or more of the changeable parameters in the audio-related device included in the subscribe message so that when the value of any one of the one or more changeable parameters changes, the audio-related device provides the changed value to the performance equipment manager."

IV. Claim 40 of the main request reads as follows:

"A method of audio-related device communication in an audio system, the method comprising:

identifying a pre-determined condition;

identifying a component in a first audio node structure of a first audio-related device that is a storage location of a changeable value;

generating and transmitting a subscription message in order to subscribe to a changeable parameter in a second audio node structure in a second audio-related device and to receive a value of the changeable parameter when the pre-determined condition is present;

receiving the value of the changeable parameter and indication of the component when the pre-determined condition is met;

storing the value of the changeable parameter in the storage location; and

displaying the value on a display of the first audio-related device."

- V. In view of the board's decision, there is no need to cite claims of the auxiliary requests.

Reasons for the Decision

1. *Right to be heard - decision not reasoned*

- 1.1 Rule 111(2) EPC stipulates that a decision which is open to appeal must be reasoned, i.e. comprise a logical chain of argumentation explaining how the examining division came to its decision (cf. e.g. T 278/00, OJ EPO 2003, 546, point 2 of the reasons).
- 1.2 One of the grounds for refusing the application is that the subject-matter of claim 40 of the main request and of each of the auxiliary requests does not involve an inventive step within the meaning of Article 56 EPC. However, each part of the decision expressly dealing with this matter consists merely of a recital of the claim of the respective request (cf. points 1.2, 2.2, 3.2, 4.2, 5.2 and 6.2 of the reasons).
- 1.3 In an introductory section of the decision (cf. the top of page 5), the following is stated:

"Claim 40 refers to "a predetermined condition". The following method steps in this claim depend on this first step to identify a predetermined condition. As this predetermined condition seems to comprise any possible condition it is not clear what the technical purpose would be of identifying and using this condition. (Article 56 EPC)".

- 1.4 However, this statement at most deals with the contribution to inventive step of a single feature of the claim. That is however not a sufficient reason for concluding that the subject-matter of the entire claim lacks an inventive step.
- 1.5 The board thus agrees with the appellant that the examining division failed to provide a detailed feature-by-feature analysis in the decision to reject claim 40 of the main and auxiliary requests, such that it is impossible to understand how and why the subject-matter was rejected based on the disclosure of document D2.
- 1.6 The board concludes that this part of the decision dealing with claim 40 is insufficiently reasoned, which is a violation of Rule 111(2) EPC and therefore, in accordance with the established case law, a substantial procedural violation.

2. *Other grounds for refusing the application*

Notwithstanding point 1 above, the board will consider below the other grounds for refusing the application.

3. *Main request - claim 1 - clarity*

3.1 The expression "via a network" was objected to by the examining division as being unclear within the meaning of Article 84 EPC, because it was not clear whether or not the network was part of the claimed system. The board agrees. However, the expression "via the network" has been removed from claim 1 of at least the present main request. Hence, this objection no longer applies to the pending main request.

3.2 The board observes that claim 1 is a claim for a system but is formulated partly in terms of the steps of a method ("a performance manager communicates ...", "where the performance manager further generates ...", etc.). Consequently, the matter for which protection is sought is not clearly defined, contrary to Article 84 EPC. In this respect, the board notes that in claim 1 as originally filed, the expression "configured to ..." was used, which is a standard way of defining apparatus features in functional terms. This expression was subsequently objected to by the examining division in the communication dated 26 March 2015, leading to the present unclear formulation. The board however does not agree that the expression "configured to ..." was unclear, and its reintroduction would apparently overcome the present objection. However, in view of the board's decision to remit the case (see below), this matter is best dealt with by the examining division.

4. *Main request - claim 1 - novelty*

4.1 Claim 1 includes the feature "where the performance equipment manager further generates and transmits a subscribe message to the audio-related device, the subscribe message comprising specification of one or more of the changeable parameters and a request to

receive a value of the specified one or more changeable parameters upon a change in the value".

4.2 The examining division considers that this feature is disclosed either in D2, col. 6, lines 9-11, which reads:

"Alternatively, the device not in the database may be queried to determine specific functionality in block 210 and user interface elements retrieved in block 212",

or in col. 6, line 56, to col. 7, line 3, which reads:

"Another embodiment of the present invention gathers from each peripheral device 120 attached to or interconnected with a system the type of connection the device has to its programming source, that is antenna, cable, satellite, or no antenna. Also, the embodiment gathers from each device a list of its available channels. Tuning information, specifically the operations or instructions required to tune each various peripheral device to a specific available channel, is also gathered. From the gathered information, a computer based channel map may be generated for the entire system.

Each peripheral device provides to the channel map its functionality, tuning information, connection information, and available channels. A computer based model of the entire system us [sic] generated from the information received from the attached or interconnected devices."

4.3 The examining division further comments as follows (cf. page 6, last paragraph of point 1.1 of the reasons):

"The technical feature of "subscribing" to the information from the audio related device is an implicit technical feature of document D2. Document D3 (claim 1) discloses the technical feature of sending a subscription request in order to receive data. D2 does not contain the word "subscribing", but the technical means of the word as defined is the same as that of "query" in D2."

- 4.4 In D2, information is "gathered" from the peripheral devices (cf. the second of the passages cited above in point 4.2). How exactly this is carried out is not directly stated in this passage, although plausibly this is done by "querying" the devices, as stated in the first of the cited passages. The examining division considers that the feature of "subscribing" is thereby implicit in D2. The board does not agree. The term "subscribe" implies some permanent or at least semi-permanent arrangement by which the peripheral device is set up to transmit a value of the specified one or more changeable parameters in the subscribe message upon a change in the value, whereas a "query" is a one-off request for information.
- 4.5 With respect to the subscribing feature, the examining division also refers briefly to document D3 (cf. point 4.3 above). However, combining D2 with D3 is a matter to be considered in connection with inventive step, not novelty.
- 4.6 With respect to novelty, the examining division also considers that the following feature is disclosed in D2 (cf. point 1.1 of the reasons):

"an audio-related device that includes a hierarchical audio node structure indicative of the functionality of the audio-related device, where the hierarchical audio node structure includes components representative of changeable parameters in the audio-related device".

4.7 Here, the examining division refers to column 5, line 56 - column 6, line 15, with regard to the functionality of the peripheral devices, and states: "this functionality can be described with a hierarchical node structure, i.e. D2 "includes" such a hierarchical node structure."

4.8 However, a finding of lack of novelty relies on all the features of the claim being directly and unambiguously disclosed in the cited document, taking account of features which are implicit. That is not the case here. The mere fact that the functionality of the device could be hierarchical (e.g. based on common general knowledge) does not equate to a disclosure of this feature.

4.9 It follows that the subject-matter of claim 1 is new with respect to the disclosure of D2 (Articles 52(1) and 54 EPC).

5. *Main request - claim 1 - inventive step*

5.1 The examining division has not yet properly considered the question of inventive step as regards claim 1, except, albeit in connection with novelty, to refer to claim 1 of document D3 as disclosing the "subscribing" feature. D3 is however an extensive document. A possible combination of D3 with D2 would require a proper analysis of D3 and the development of a chain of argumentation, e.g. based on the problem and solution

approach. If inventive step were denied, the appellant would have to be given the opportunity to respond with counter-arguments and/or amendments. However, for the board to perform this examination would run counter to the purpose of appeal proceedings, which are primarily concerned with examining the correctness of the appealed decision (cf. G 10/93, point 4 of the reasons), all the more so as the appellant would then be only able to defend its case before one instance of jurisdiction.

6. *Remittal*

In view of the need for examination of claims 1 and 40 with respect to inventive step, and considering the substantial procedural violation referred to above, the case is remitted to the examining division for further prosecution (Article 111(1) EPC).

7. *Reimbursement of the appeal fee*

Although the board normally orders reimbursement of the appeal fee on account of a substantial procedural violation, this would not be equitable in the present case in view of the refusal additionally being based on other grounds not tainted by the procedural violation.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated