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**Datasheet for the decision  
of 28 October 2021**

**Case Number:** T 1194/18 - 3.5.02

**Application Number:** 08855200.5

**Publication Number:** 2215708

**IPC:** H02M7/06

**Language of the proceedings:** EN

**Title of invention:**

Capacitive power supply

**Applicant:**

Koninklijke Philips N.V.

**Relevant legal provisions:**

EPC Art. 56, 111(1)

**Keyword:**

Inventive step - main request and auxiliary requests 1 to 5  
(yes)

Appeal decision - remittal to the department of first instance  
(yes)



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 1194/18 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 28 October 2021**

**Appellant:** Koninklijke Philips N.V.  
(Applicant) High Tech Campus 52  
5656 AG Eindhoven (NL)

**Representative:** 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 8 January 2018  
refusing European patent application No.  
08855200.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R. Lord  
**Members:** H. Bronold  
J. Hoppe

## **Summary of Facts and Submissions**

- I. The appeal of the patent applicant lies from the decision of the examining division to refuse European patent application No. 08 855 200.5. The examining division found that none of the appellant's requests defined subject-matter that involved an inventive step over the disclosure of document D4. The contested decision cited in total nine prior art documents (D1 to D9). However, only document D4 (US 4,126,793) was discussed.

The appellant requested that the decision under appeal be set aside and that a patent be granted based on their main request or one of auxiliary requests 1 to 5, as set out in the grounds of appeal.

The appellant further requested that the appeal fee be reimbursed on the grounds of a substantial procedural violation due to a violation of their right to be heard.

- II. In a communication dated 17 April 2019 the board informed the appellant, that it tended not to agree with the appellant that a substantial procedural violation had occurred.

The appellant did not reply to the board's communication.

- III. In a further communication dated 30 June 2021 the board informed the appellant that it tended to consider the contested decision to be incorrect with respect to lack

of inventive step over the disclosure of document D4, both formally and in substance and that it intended to set the contested decision aside and remit the case to the first instance for further prosecution. However, the appellant's pending requests for reimbursement of the appeal fee and for oral proceedings prevented a direct decision of the board.

IV. With letter dated 9 August 2021 the appellant withdrew their request for reimbursement of the appeal fee and reformulated their request for oral proceedings, the oral proceedings now being requested only if the board considered rejecting the application without remittal.

V. Claim 1 according to the main request reads as follows:

"Capacitive power supply comprising

an input section (10) having input terminals (Ln, Nt) for connection to an AC-mains supply, and a capacitive coupling,

a rectification section (20) coupled via the capacitive coupling to the input terminals (Ln, Nt), and

an output section (30) coupled to the rectification section, the output section comprising

- output terminals (V+, V-), for providing an output voltage to a load,

- a first chain comprising a charge storage facility (C2), and

- a second chain arranged in parallel to the first chain, and comprising an output voltage limiting

facility (D5) and a DC-conducting series impedance (Zdc),

wherein the output terminals (V+, V-) are connected to respective terminals of the output voltage limiting facility (D5), and the DC-conducting series impedance (Zdc) has a resistive component with a resistive value of at least 0.2 times a resistance value of the first chain,

characterized in that the capacitive power supply further comprises an inrush current limiting facility (R1)."

Claims 2 to 6 are dependent on claim 1.

VI. The independent claim 1 according to auxiliary requests 1 to 5 also comprise the decisive features of claim 1 according to the main request as discussed under point 3 of this decision, which the board considers to be not anticipated starting from document D4.

VII. The appellant's arguments, as far as they are relevant for this decision, can be summarised as follows:

The appellant's right to be heard had been violated. The examining division presented document D4 for the first time in the summons to oral proceedings and referred to it as being the closest prior art for the first time during the oral proceedings. During the oral proceedings the examining division proposed to start the discussion with auxiliary request 5. This reflected that the examining division had a "pre-convinced" opinion and only started with auxiliary request 5 to minimise the "time effort".

The subject-matter of claim 1 according to the main request was novel and inventive over the disclosure of document D4. D4 disclosed a remote control and not a capacitive power supply. Further, terminal 48 belonged to the circuitry of the selective receiver section which handles signals and was not capable of supplying power to a load. In addition, resistor 49 could not be interpreted as a DC-conducting series impedance in the sense of claim 1 because, contrary to the wording of claim 1, it was not connected in series. The ratio of 0.2 times the resistance value of the first chain was further not inherent to the disclosure of document D4.

Claim 1 of each of auxiliary requests 1 to 5 merely comprised additional features which were also not mentioned in document D4 such that auxiliary requests 1 to 5 were also new and inventive over the disclosure of document D4.

## **Reasons for the Decision**

### 1. Admissibility of the appeal

The appeal was filed in due time and form and sufficiently substantiated. Consequently, the appeal is admissible.

### 2. Procedural violation

#### 2.1 Contrary to the appellant's allegation, document D4 was not cited for the first time in the oral proceedings on

1 December 2017 but already beforehand, in the summons dated 2 June 2017. Thus, although D4 was at that stage cited without specific reference to it as being the closest prior art, the appellant knew that they needed to prepare their argumentation on inventive step taking into account this document. Moreover it should be noted that the examining division was not obliged to present a detailed reasoning in the summons. Thus, it is not to be contested that in the summons it was merely indicated which articles and documents would be discussed.

As regards the appellant's objections against the course of the oral proceedings it needs to be noted that the party's right to be heard is observed if the party is given an adequate amount of time to consider the arguments presented by the examining division for the first time in the oral proceedings. How much time is sufficient depends on the nature of the newly introduced aspect. In the present case there is no indication that the change of the closest prior art put the subject-matter in a new and more complex technical context. Thus, it did not entail a surprisingly new procedural situation that required postponement. Moreover, if a party needed more time for preparation, they would at least have to request an interruption or postponement of the oral proceedings. In the case on file there is no indication that the appellant made such a request. The mere statement "to be surprised" which is noted in the minutes (see minutes, point 5.2) cannot be identified as such a request.

Finally, it needs to be considered that an applicant presenting new sets of claims after the summons to oral proceedings in turn must expect to defend the claims against new objections raised at the oral proceedings

based at least on all documents on file (see also T 327/92, point 5.3).

The examining division's proposal to start the discussion with auxiliary request 5 instead of starting with the main request was an allowable means to organise the oral proceedings efficiently. Due to the fact that even the convergent and most limited request (containing all the features of the prior requests) was considered to be not allowable under Article 54 or Article 56 EPC, it followed logically that the higher-ranking requests would not be allowable either. Moreover, in the present case the appellant agreed to the proposal of the examining division, and the examining division in fact did discuss the higher-ranking requests at a later stage of the oral proceedings.

Moreover, there is no indication that the examining division was (or gave the impression of being) prejudiced by proposing to start with auxiliary request 5, because it further announced that it would go back to the prior requests (see minutes point 4). This indicates clearly that the examining division was willing to assess the other requests if necessary. In fact, the examining division did discuss the patentability of the other requests, after it concluded that even auxiliary request 5 (which the examining division found to include all the features of the former requests) was not allowable.

As the examining division was open to discussing the higher ranking requests later if the outcome of the discussion required so, the efficient organisation of oral proceedings did not constitute a reason for



suspicion of partiality or an infringement of the party's right to be heard.

The board has therefore come to the conclusion that no procedural violation occurred in the present case.

3. Main request - Article 56 EPC

3.1 In the contested decision, the examining division found that the subject-matter of claim 1 according to the main request did not involve an inventive step over the disclosure of document D4, which allegedly "*discloses all features of claim 1 according to the main request*" (cf. point 10.1 of the contested decision).

From the additional remarks in point 17 of the contested decision, it follows that the examining division had not erroneously cited the wrong article of the EPC but deliberately chosen Article 56 EPC instead of Article 54 EPC, although it concluded that all the features of claim 1 of the main request were disclosed in D4. However, this would have justified a conclusion of lack of novelty.

3.2 Irrespective of the question of whether the examining division's objection is based on the correct article of the EPC, the board is also not convinced that the examining division's conclusion that D4 discloses all the features of claim 1 according to the main request is correct.

As argued by the appellant, there are numerous differences of the subject-matter of claim 1 according to the main request over the disclosure of document D4.

- 3.3 Firstly, document D4 relates to a remote control receiver whereas claim 1 defines a capacitive power supply. The board is well aware that also the remote control receiver of D4 comprises a capacitive power supply. The separation of functional units of the remote control receiver conducted by the examining division however seems to be purely arbitrary with the aim to make it fit to the wording of claim 1, thereby ignoring the disclosure of document D4 and what a person skilled in the art would have learned from it.
- 3.4 Secondly, following the above aspect of separation of functional units of the remote control receiver of D4, the board is not convinced that terminal 48 can be interpreted as "output terminal ... for providing an output voltage to a load". The appellant has correctly pointed out that terminal 48 belongs to the circuitry of the selective receiver section which handles signals. A signal path may in general not be interpreted to be capable of supplying power to a load.
- 3.5 Thirdly, resistor 49 identified by the examining division as "*DC-conducting series impedance*" in the sense of claim 1 is not in series with the diode 47, contrary to the corresponding feature of claim 1.
- 3.6 Lastly, the claimed ratio of 0.2 between the resistance value of the DC-conducting series impedance and that of the capacitor 15 does not seem to be inherent to the disclosure of D4. The examining division's analysis under point 10.1 is based on the assumption that "*resistor 49 equals at least some ohms*" for which there is no basis, either in D4 or in the common general knowledge of the person skilled in the art.

3.7 Thus, the board has arrived at the conclusion that the examining division's line of arguments based on document D4 is not suitable to demonstrate that the subject-matter of claim 1 according to the main request does not involve an inventive step.

3.8 Auxiliary requests 1 to 5 - Article 56 EPC

The board's conclusion on the main request applies *mutatis mutandis* to the subject-matter of auxiliary requests 1 to 5 which all include the features discussed above with respect to the main request.

4. Conclusion

Given the above opinion of the board, the contested decision has to be set aside.

Since the contested decision cites nine prior art documents in total, but only discusses one of them, namely document D4, the other documents still need to be assessed. The board has therefore decided to remit the case to the examining division for further prosecution.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated