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**Datasheet for the decision
of 18 October 2021**

Case Number: T 1895/18 - 3.5.03

Application Number: 10181101.6

Publication Number: 2372921

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:
Decoding in a sound reproduction system/BOSE

Relevant legal provisions:
EPC Art. 84
RPBA 2020 Art. 12(8)

Keyword:

Clarity - patent as maintained (no)

Decision in written proceedings (yes): withdrawal of the proprietor's request for oral proceedings

Decisions cited:

T 0935/14



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Case Number: T 1895/18 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 18 October 2021

Appellant: Spreepatent Schutzrechtsverwertung und
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 May 2018 concerning maintenance of the
European Patent No. 2372921 in amended form.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: K. Peirs
C. Heath

Summary of Facts and Submissions

- I. The appeal is against the interlocutory decision of the opposition division to maintain the opposed patent in amended form according to the proprietor's "auxiliary request". The proprietor's main request to reject the opposition was deemed not to be allowable for added subject-matter of claim 1 as granted (Article 76(1) EPC).
- II. The appellant (opponent) requests that the decision under appeal be set aside and that the patent be revoked.
- III. The respondent (proprietor) initially filed a notice of appeal requesting:
- that the decision under appeal be set aside and the opposition be rejected,
 - as an auxiliary request, that the appeal of the opponent be dismissed,
 - that oral proceedings be arranged.

Subsequently, the proprietor withdrew their appeal and, additionally, withdrew their request for oral proceedings. The only request to be considered in these circumstances is thus the patent as upheld by the opposition division based on the auxiliary request then on file.

- IV. Claim 1 of the **auxiliary request** underlying the decision under appeal reads as follows (amendment vis-à-vis claim 1 as granted underlined by the board):

"A sound reproduction system (10) for reproducing audio signals from digitally encoded music files on a

separate computer (20),
the sound reproduction system comprising:
audio signal processing circuitry (14) for processing
audio signals,
a speaker (18) for producing audible sound from the
processed audio signals,
control circuitry (16) for controlling the audio
processing circuitry; and
an external port (49, 51, 66) for connecting the sound
reproduction system (10) directly to the separate
computer (20), and wherein the external port is adapted
to transmit control signals from the control
circuitry (16) to the computer (20) and audio signals
from the computer (20) 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 command that is received at the control
circuitry (16) and controls operation of the sound
reproduction device, and a second control command,
which cannot be decoded by the control circuitry (16),
that is received at the control circuitry (16) and is
passed by said control circuitry through said external
port to the separate computer (20) to control the
selection of said digitally encoded music files or said
audio signals for reproduction."

Reasons for the Decision

1. *Decision in written proceedings*

The board does not consider holding oral proceedings to be expedient since the appeal is allowable in view of

the appellant's written submissions and since the respondent withdrew their request for oral proceedings (cf. point III above). As a result, the present decision can be handed down in written proceedings (Article 12(8) RPBA 2020).

2. *Technical background*

The patent relates to a "sound reproduction device" involving a computer network via which digitally encoded music files are available for playback over the device. The invention aims at providing an improved interactive sound reproduction. As shown in the figure below, sound reproduction device 10 comprises audio signal processing circuitry 14, speaker 18, control circuitry 16, external ports 49 and 51 as well as remote control device 17.

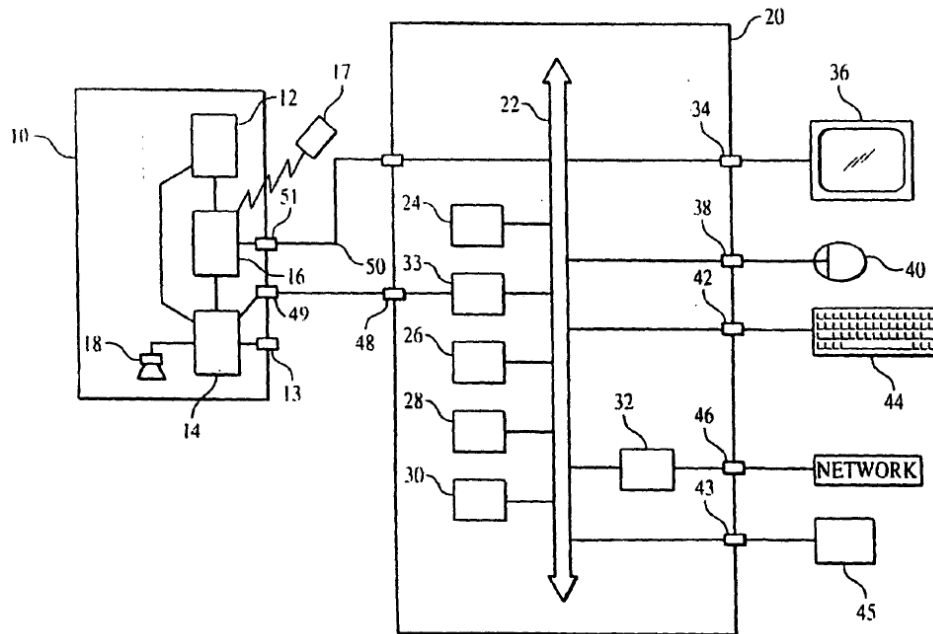


FIG. 1

3. *Auxiliary request: claim 1 - clarity*

3.1 In view of the respondent's withdrawal of their appeal, the only claim request which is to be considered in the present decision is the proprietor's **auxiliary request** underlying the decision under appeal (see point IV above).

3.2 To examine claim 1 of that auxiliary request, the board finds it convenient to focus on the following limiting feature (board's labelling and underlining):

(a) [the remote control device being capable of producing] a second control command, which cannot be decoded by the control circuitry, that is received at the control circuitry and is passed by said control circuitry through said external port to the separate computer to control the selection of said digitally encoded music files or said audio signals for reproduction.

3.3 The appellant correctly pointed out that the clause "which cannot be decoded by the control circuitry" of **feature (a)** has no correspondence in the claims as granted (see also the underlining in point IV above) and, as a result, constitutes an amendment that is open to examination for compliance with the requirements of Article 84 EPC.

3.4 For the following reasons, the board agrees with the appellant that the above wording as underlined in feature (a) leads to a lack of clarity:

3.4.1 The term "to decode" typically relates to a conversion of a data signal into a different (usable) form, which can be performed regardless of whether this conversion

concerns a decryption or a change of the functional "language". Hence, contrary to what was alleged by the appellant, the skilled reader *would* indeed be able to properly understand this term.

However, the board *does* agree with the appellant that the skilled reader would be unable to understand the *limitations* that are imposed on the "sound reproduction system" of claim 1 by the fact that the "control circuitry" is not able to "decode" the received second control command as expressed in feature (a). For the benefit of the respondent, the expression "received" in feature (a) is assumed to imply that the "remote control device" sends the second control command in a form that can be detected by the control circuitry, which causes, for instance, an infrared (IR) remote control to require an associated IR detector at the control circuitry's side. Even under this assumption, there are still various ways which could prevent a proper decoding of the second control command by the control circuitry. One can consider the following few examples, which would readily occur to a skilled reader:

- 3.4.1.1 The "remote control device" could use a modulation scheme that is not understood by the control circuitry. As a mere example, it is referred to an Amplitude Shift Keying (ASK) or a Frequency Shift Keying (FSK) modulation in case of an IR remote control system. Alternatively, the modulation scheme deployed at the remote control device could not be understood by the control circuitry because of the applied carrier frequency, e.g. when different protocols are adopted by the remote control device and the control circuitry.

- 3.4.1.2 If the same modulation scheme is used, different encoding schemes are possible. For instance, for ASK modulation, one can apply *pulse position encoding*, *pulse distance encoding*, *pulse width encoding* or *Manchester/biphase encoding* to transmit the second control command.
- 3.4.1.3 Even if the remote control device and the control circuitry do employ the same modulation and the same encoding scheme, interference from an external source (e.g. sunlight shining on an IR receiver) may cause the second control command to become unintelligible for the control circuitry.
- 3.4.1.4 Furthermore, the appellant correctly argues that the "sound reproduction system" of claim 1 covers configurations with components being "contained in different, separate, devices". This applies in particular to the control circuitry, which can well correspond to a distributed arrangement composed of a detector and a processor that are each powered by a dedicated power source. In such an arrangement, the detector may very well receive the second control command, but the processor would still be dependent on the availability of its own power source to be able to decode the received second control command.
- 3.4.2 For the **first two examples** of points 3.4.1.1 and 3.4.1.2 above, the board will assume, *arguendo* and for the respondent's benefit, that the skilled reader would be able to compare the modulation and encoding schemes of the remote control device and the control circuitry to determine whether or not the control circuitry can decode a received second control command.

3.4.3 However, the same does not hold true for the **third and fourth examples** of points 3.4.1.3 and 3.4.1.4 above: whether or not a certain "sound reproduction system" is embraced by the subject-matter of claim 1 depends

- for the *third example* on the external source (which is not part of the claimed subject-matter)

and

- for the *fourth example* on the state of the system's constituting components, such as the charge of a battery, the position of an on/off switch or whether or not a plug is connected to the mains.

Whether or not the same "sound reproduction system" would then be encompassed by the subject-matter of claim 1, depends on circumstances that are not mentioned in claim 1. As a result, the borders of the subject-matter comprised by claim 1 cannot be clearly inferred by the skilled reader (see in this respect also **T 935/14**, Reasons 10.2).

3.4.4 Moreover, as emphasised by the appellant, the description as filed underlying the patent only mentions the expressions "decode" and "decoding" in one single sentence (namely in lines 17 to 20 of page 12 as filed), which does not provide any indication on how the clause "which cannot be decoded by the control circuitry" of feature (a) is indeed to be construed.

3.5 Therefore, the amendment to claim 1 of the present auxiliary request lacks clarity (Article 84 EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated