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Aktenzeichen / Case Number / N^o du recours : T 468/89 - 3.5.1

Anmeldenummer / Filing No / N^o de la demande : 85 830 210.2

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 231 403

Bezeichnung der Erfindung: Two-way audiovisual telecommunications system

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : H04N 7/14

ENTSCHEIDUNG / DECISION

vom / of / du 11 October 1990

Anmelder / Applicant / Demandeur : Biselli, Antonio

Patentinhaber / Proprietor of the patent /

Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPU / EPC / CBE Articles 123(2), 84, 83

Schlagwort / Keyword / Mot clé : "(after amendment) remitted to the first instance for further prosecution"

Leitsatz / Headnote / Sommaire



Case Number : T 468/89 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal
of 11 October 1990

Appellant : Biselli, Antonio
Viale Michelangelo, 19
I-06080 Palazzo d'Assisi (Perugia)

Representative : Zanotti, Nemo
c/o Modiano & Associati S.r.L.
Via Irnerio 12/2
I-40126 Bologna
ITALIE

Decision under appeal : Decision of Examining Division 2.2.02.058 of the
European Patent Office dated 22 February 1989
refusing European patent application
No. 85 830 210.2 pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : P.K.J. van den Berg
Members : R. Randes
M. Lewenton

Summary of Facts and Submissions

- I. European patent application No. 85 830 210.2 (publication No. 0 231 403), filed on 1 August 1985, was refused by decision of Examining Division 2.2.02.058 dated 22 February 1989.

- II. That decision was based on the ground that the then valid Claims 1 to 6 lacked clarity (Article 84). The Examining Division said in the decision that the description and the Claims were so unclear that no meaningful examination was possible. Moreover it was pointed out that it is a basic contradiction of the well accepted laws of physics, to assume that the projection of an optical image onto the "plate of frosted glass 3.10" (Figure 3) could have any effect whatsoever upon the characteristics of a magnetic field. Nevertheless, the whole specification appeared to be based on that alleged effect. The Examining Division furthermore said that if said effect were possible, a detailed explanation of the physical functions involved was absolutely essential to the clarity of the claims. This, however, would not be possible, the Division added, without the inadmissible addition of subject-matter extending beyond the scope of the application as originally filed.

- III. The Appellant (Applicant) lodged a notice of appeal against this decision on 19 April 1989 and paid the relative fee already on 11 April 1989. On 30 June 1989, the Appellant filed together with the Statement of Grounds an amended single Claim, a new drawing for replacement of Figures 3 and 4 and a subsidiary request for oral proceedings.

The only Claim reads as follows:

"Two-way audiovisual telecommunication system characterized in that, for each way, it comprises a transmitter including a TV-camera with a cathode-ray (11) having an anode defined

by a screen adapted to fix and optical image thereon, a magnetic lens (12) operatively associated to said cathode-ray tube and adapted to generate a plurality of small beams from said cathode-ray, said beams scanning the optical image on the screen and each beam generating an analogic signal, a TV-receiver being further provided including a cathode-ray tube (16) with which a magnetic lens (15) is operatively associated to generate a plurality of small beams reconstructing the image on the monitor on said TV-receiver, said receiver being connected to a video modulator which transforms the analogic signals of said transmitter into video signals for said TV-receiver."

- IV. On 29 May 1990 the Rapporteur issued a communication wherein he stated that the said new claim did not meet the requirements of Article 123(2) EPC as it was amended in such a way that it clearly contained subject-matter extending beyond the content of the application as filed. Moreover, said communication contained the following passage :

Thus it is not even clearly disclosed in the description if the optical image is "fixed" at an anode of a cathode-ray-tube - it is only said (page 4, lines 6 to 7) that the Tx comprises "the plate of frosted glass 3.10 where the optical image is formed.

Moreover, there is nowhere disclosed in the original application that a magnetic lens is operatively associated to said cathode-ray tube and adapted to generate a plurality of small beams from said cathode-ray, said beams scanning the optical image on the screen and each beam generating an analogic signal. Neither is there disclosed that a TV-receiver can be provided including a cathode-ray tube with which a magnetic lens is operatively associated to generate a plurality of small beams reconstructing the image on the monitor on said TV-receiver. Furthermore the description neither discloses that such signals are

transmitted nor that they are modulated (compare the last four lines of the Claim)."

In the communication it was also said that the Board's view concerning the clarity of the original description and the Claims concurred with the one of the Examining Division expressed in the said decision.

Additionally the Board found that also Article 83 was violated as the original application did not disclose - as far as could be understood - the alleged invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

- V. Oral proceedings were held on 11 October 1990. The Appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the sole claim filed with the statement of grounds of appeal (see under III. above).

The Representative of the Appellant stated (thereby relying on Singer: "Europäisches Patentübereinkommen", page 279, under "Deutlichkeit und Vollständigkeit für den Fachmann") that when identifying the disclosure of an application, it was not the wording of the application itself that was decisive at the identification of the disclosure, but instead the sense of the wording as it is understood by a skilled man. Thus, apparently an application (claims and description) did not need to contain features that were self-evident or implicitly known to a skilled man.

Thereafter he dealt with the arguments put forward in the said communication of 29 May 1990. He regretted that the English text in the present application apparently was not correctly translated from the original application text that was filed in Italian (Article 14(2) EPC). Thus the expression "an electronic beam" in the original application documents (in English), page 2, lines 23 and 24, should in

fact have been "a bundle of electrons". He thereby meant to say that the bridging paragraph between the original pages 2 and 3 provided with this correction would meet the objections made in the communication (Article 123(2) EPC) with respect to the generation of "a plurality of small beams" from the cathode-ray and therefore support the valid claim. Moreover, he expressed the view that a skilled man would understand from the original description (page 4, second paragraph) that the said "frosted glass" in the TV-camera was to be understood as the image section of the camera.

Thereafter, the Appellant presented what he called a working model of the alleged invention. A picture in front of the camera was transmitted to the monitor of the TV-receiver. The received picture was not of a good quality but clear enough to make it possible to recognise the original picture. The less good quality was explained by the fact that the transmission was made on a telephone cable with a narrow frequency band of 4 kHz.

Moreover, the Appellant stated that the normal line scanning control of the beams of both the camera and the receiver were not being used. Instead, the principles of Fermat-Maupertuis were applied. The Appellant showed texts from literature concerning the influence of a magnetic lens on an electron beam. Thus according to the alleged invention the magnetic lens was said to act on the electrons in such a way that they were rotated around their own axes and divided into "beams" of electrons which were "expanded" and rotated around the axis of symmetry of the magnetic field. These beams then apparently were scanning the image in the camera and a modulated signal was transmitting the image to the receiver, where the function of the magnetic lens was inverted, so that a picture was reproduced on the screen.

However, the Appellant said that he could not give a detailed theoretical explanation to all interworking relationships in his system and pointed out that the "invention" was born from the his intuition, which had proved to be correct.

Reasons for the Decision

1. The appeal is admissible.
2. Having regard to the submissions made by the Appellant during the oral proceedings, it appears to the Board that the explanations given, the partly different interpretation of the description and the demonstration of a working model have changed the basis from which the alleged invention must be judged entirely.

The only reason for the decision to refuse the present application was the lack of clarity of the claims.

However, to the Board it appears that the present sole claim must be considered at least as "formally" clear, in that the aimed function of the alleged invention is indicated and that at least prima facie some of the necessary components of the claimed system seem to be defined therein.

As the basis of the alleged invention has been changed, the Examining Division, during the substantive examination, apparently had to judge the application from a quite different basis. Since the application was examined only with regard to a set of claims totally different from the present sole claim and only with respect to Article 84 and since it is important to preserve the Appellant's right to a second instance, it is in the Board's judgement appropriate to exercise its power under Article 111(1) EPC and to remit this case to the Examining Division for further prosecution.

Thus the Examining Division will first of all have to consider whether the sole claim meets the requirements of Article 123(2) EPC. It will also have to decide whether the description can be interpreted as suggested by the Appellant during the oral proceedings before the Board (see foregoing point V) and whether the drawing filed on 4 July 1990 may replace the original Figures 3 and 4.

Furthermore, it must be investigated whether the only claim also is "substantially" clear, that is if all the features necessary and essential for an appropriate functioning of the system are defined in the claim; thus it should also be investigated whether the features necessary for defining the interworking physical relationship between the parts of the system are given.

Such an investigation is clearly closely related to the investigation on sufficiency of disclosure of the alleged invention (Article 83 EPC), which investigation also must be performed before a final examination on novelty and inventive step of the invention according to the application can be carried out.

However, when making the said investigations, it should be borne in mind that features which are self-evident or implicitly known to a skilled person working in the corresponding field must not necessarily be defined in a claim or even identified in the corresponding description (cf. under V. second paragraph above).

Order

For these reasons, it is decided that:

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

The Registrar:

The Chairman:

E. Görgmaier

P.K.J. van den Berg