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D E C I S I O N
of 23 April 1996

Case Number: T 0992/93 - 3.5.1

Application Number: 88100963.3

Publication Number: 0276020

IPC: H04N 3/15

Language of the proceedings: EN

Title of invention:

Improvement in output stage for solid-state image pick-up device

Applicant:

SONY CORPORATION

Opponent:

-

Headword:

SONY/Image pick-up device

Relevant legal provisions:

EPC Art. 84

Keyword:

"After amendment: clarity of claim 1 (yes)"

Decisions cited:

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Catchword:

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Case Number: T 0992/93 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 25 April 1996

Appellant:

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Representative:

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Decision under appeal:

Decision of the Examining Division of the European
Patent Office posted 13 July 1993 refusing
European patent application No. 88 100 963.3
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. K. J. Van den Berg
Members: R. Randes
G. Davies

Summary of Facts and Submissions

- I. European patent application No. 88 100 963.3, filed on 22 January 1988, claiming a priority of 22 January 1987 and published under No. 0 276 020, was refused, after a single communication from the Examining Division, on 13 July 1993.

The reason given for the refusal was a lack of clarity in independent claim 1, which therefore did not meet the requirements of Article 84 EPC. While comments on novelty and inventive step were included with the decision, the Examining Division stated that it could not reach a final conclusion on these issues since the matter for which protection was sought in claim 1 could not be ascertained.

- II. On 13 September 1993 the Applicant filed an appeal against this decision, and paid the appeal fee. A statement setting out the grounds of the appeal was filed on 11 November 1993. The Appellant's main request was for grant of the patent on the basis of the documents then on file. An auxiliary request was made for remittal to the Examining Division so that novelty and inventive step could be examined. There was a further auxiliary request for oral proceedings, and a request for refund of the appeal fee, based on arguments that the Examining Division should not have issued a decision without a further communication.

- III. In a communication pursuant to Article 110(2) EPC the Rapporteur gave reasons for the preliminary opinion that claim 1 did seem to be unclear and that no significant procedural violation had apparently taken place to justify the reimbursement of the appeal fee in accordance with Rule 67 EPC.

In response to the submission, on 7 December 1995, of new sets of claims to form the basis of new main and auxiliary requests, in which submission the request for reimbursement of the appeal fee was maintained, a summons to oral proceedings to take place on 22 April 1996 was issued. In an annex to this summons, it was stated that claim 1 of the main request seemed to meet the requirements of Article 84 EPC, so that the Board would apparently be in a position to remit the case to the Examining Division for further prosecution. However, it was necessary to summon the Appellant to oral proceedings to argue the case for reimbursement of the appeal fee, since as before the Board's preliminary opinion was that such reimbursement would not be justified. Further reasons were given for this opinion.

In a further submission received 21 March 1996, the Appellant stated that in the event that the case could be remitted to the first instance on the basis of the documents making up the main request, the request for reimbursement of the appeal fee would not be upheld, and that the oral proceedings would therefore be superfluous.

The oral proceedings were thereupon cancelled.

IV. The Appellant's main request is for the grant or remittal to the first instance of the patent application consisting of the following documents:

Claims: 1 to 12 (main request) submitted on
7 December 1995;

Description: pages 1, 5, 7, and 9 to 14 submitted on
1 June 1993; 2 and 4 submitted 7 December
1995; 6 and 8 filed on 21 March 1996; (no
page 3);

Drawings: sheets 2 and 3 as originally filed;
sheet 1 submitted on 1 June 1993.

In the auxiliary request the claims are replaced by claims 1 to 6 (auxiliary request) also submitted on 7 December 1995.

V. The independent claim of the main request reads as follows:

"An output circuit for a solid-state image pick-up device comprising:

an amplifier circuit (10) connected to the output of said solid-state image pick-up device for amplifying the output signal of said solid-state image pick-up device and

a buffer amplifier circuit (20) in voltage follower construction connected to the output of said amplifier circuit (10)

characterised in

that said buffer amplifier circuit (20) has a gain substantially 1 and includes an operational amplifier (20A) with a positive and a negative input terminal, and a source follower circuit (20B) connected to the output of the operational amplifier (20A),

whereby the positive input terminal of the operational amplifier (20A) is connected to the output of said amplifier circuit (10) and the output signal from the source follower circuit (20B) is applied to the negative input terminal of the operational amplifier (20A) as a negative input so as to form a negative feedback loop."

The wording of the claims of the auxiliary request is not germane to this decision.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. The request for reimbursement of the appeal fee is withdrawn as an effect of this decision (see III above). Discussion of the merits of the request in the reasons for the decision is therefore redundant.
3. The independent claim of the main request has been so amended as to overcome the explicit objections of the refusal decision. In particular, the connections between the various claimed elements of the circuit are clearly specified, and the expression "having a constant DC level" has been removed from the claim. The current claim includes a characterising feature defined parametrically, viz. "said buffer amplifier circuit has a gain substantially 1". However in the Board's view, the skilled person would easily be able to determine whether any particular circuit would satisfy this condition, so that the matter for which protection is sought is clear in this respect. Furthermore, it does not appear to the Board that this feature can be considered to cast the claim in the form of "claiming by result", since it would seem to be a routine task, not requiring any inventive activity, for the person skilled in the art to choose the parameters of the buffer amplifier circuit elements also specified in the claim so that this feature is realised.

Further, the Board considers the current independent claim to be clear as a whole, the elements being defined in terms which would be familiar to the person skilled in the art, and the relationship between the elements being clearly specified. The subject-matter of the claim

is also clearly disclosed in the description of the originally filed application (figures 1 and 2, column 3 line 52 to column 4 line 12 of the application as published). Hence the Board is satisfied that the newly submitted claim fulfils the requirements of both Article 84 and Article 123(2) EPC.

4. The only objection against the dependent claims raised in the refusal decision under Article 84 EPC related to the phrase "having a constant DC level". This phrase has been removed from the current dependent claims, so that the objection has been overcome. However the Board has not come to any other definitive conclusion as to the allowability of the new dependent claims under Articles 84 or 123(2) EPC.

5. The Examining Division refused the application on the ground that it did not satisfy Article 84. It did not come to any conclusion on the other issues of patentability, in particular novelty and inventive step. The comments on these issues which were appended to the decision appear no longer to be relevant, since they were addressed to significantly different claims. In particular the feedback element in the buffer amplifier now included in claim 1 was not specified in any claim which the Examining Division discussed. Hence it is appropriate to remit the application to the Examining Division for consideration of the further issues.

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 on the basis of the application documents of the Appellant's main request.

The Registrar:

The Chairman:

M. Kiehl

P. K. J. van den Berg