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**D E C I S I O N**  
of 17 January 1997

**Case Number:** T 0461/95 - 3.5.1

**Application Number:** 87110918.7

**Publication Number:** 0255108

**IPC:** H04N 5/76

**Language of the proceedings:** EN

**Title of invention:**  
Program preset control circuit

**Patentee:**  
SANYO ELECTRIC CO., LTD.

**Opponent:**  
Interessengemeinschaft für Rundfunkschutzrechte E.V.

**Headword:**  
Program preset control circuit/SANYO

**Relevant legal provisions:**  
EPC Art. 54(2), 56

**Keyword:**  
"Novelty (yes)"  
"Inventive step (yes)"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0461/95 - 3.5.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.1  
of 17 January 1997

**Appellant:**  
(Opponent)

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**Respondent:**  
(Proprietor of the patent)

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**Decision under appeal:**

Decision of the Opposition Division of the  
European Patent Office posted 3 April 1995  
rejecting the opposition filed against European  
patent No. 0 255 108 pursuant to Article 102(2)  
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 No. 0 255 108 was granted with seven claims on European patent application No. 87 110 918.7 claiming an earliest priority from 1 August 1986.

Claim 1 of the patent as granted reads as follows:

"A program preset control circuit for controlling operation of recording means in response to a VPS code multiplexed in a broadcasting signal, comprising:

preset program code setting means (4a, 4b, 6a) for presetting a preset program code effective to preset a channel,

determining means (2, 3, 17, 18, 19) for determining whether or not the VPS code is included in a broadcasting signal of said preset channel at the time of setting the preset program code by said preset program setting means for determining whether or not recording based on the VPS code is possible, and

indicating means (9) responsive to an output from said determining means for producing an indication whether or not recording based on the VPS code is possible.

- II. A notice of opposition was filed by the appellant on 2 July 1993, requesting revocation of the patent in suit in its entirety on the grounds of lack of novelty and lack of inventive step in the light of the documents D1 to D5.
- III. After considering the grounds of opposition, the Opposition Division rejected the opposition by the decision dispatched on 3 April 1995.

- IV. On 18 May 1995, the opponents filed a notice of appeal against the decision, paying the appropriate fee simultaneously. The statement of grounds of appeal was filed on 3 August 1995.
- V. After a reply from the respondents and a subsequent letter from the appellants, the Board in a communication pursuant to Article 11(2) of the RPBA expressed the preliminary opinion that claim 1 of the patent could be interpreted either in a restricted way, as had been done by the respondents or, in contradiction thereto, as had been done by the appellants, in a way which gave the subject-matter of the claim a broad scope. It was suggested that the claim interpreted in a limited way would be allowable, while the claim, interpreted to have a broad scope, would probably not be allowable. How the claim had to be interpreted had to be decided at the oral proceedings.
- VI. Before the oral proceedings, held on 17 January 1997, the respondents on 3 December 1996 filed a new claim 1 according to an auxiliary request, but maintained the opinion that claim 1 of the patent as granted met the requirements of novelty and inventive step. This opinion was, however, contested by the appellants in a further letter.

In the written correspondence and during the oral proceedings before the Board, the appellants, in fact, only used the document

D3: ITT DIGIcontrol VR 3946 VCR, instruction manual, i.e. a manual for a prior use video tape recorder having "DIGIcontrol VR 3946 Stereo-VPS" and sold by "ITT Schaub Lorenz Vertriebsgesellschaft mbH", Pforzheim,

in their argumentation, stating that the prior use video recorders had been sold in the months of March to May 1986, thus before the priority date of the present patent. The respondents did not contest the validity of this prior use.

VII. In written correspondence and during the oral proceedings the appellants made, in substance, the following points:

VII.1 D3 disclosed three different "programming modes".

According to D3, page 7 under "Speichern der Fernsehprogramme" during the channel set-up, i.e. during storing the channels in correspondence to the program position, a VPS indication was displayed automatically when the selected channel transmitted a VPS signal (see point 5).

Point 2 under "Aufnahme mit Schaltuhr", page 10 in D3, disclosed that during the operation of presetting a program to be recorded, after the step of entering the channel which should transmit the desired program, the VPS indication was displayed if the VPS signal had been detected during the channel set-up. Thus it was indicated during the program preset operation, whether said VPS indication had been stored in a memory during the channel set up.

In an annex to D3 under "Die VPS-Information" it was disclosed that the prior use recorder during recording could be prompted to indicate (by a push-button) whether or not the currently transmitted program contained a VPS signal. This indication of the video recorder showed the operator that it was possible to set the VPS stop time of a program, the recording of which had been started manually (the instantaneous recording mode cf. page 9, D3, under "Sofortaufnahme",

point 4) or the recording of which had been preset in the clock mode. Thus, after setting said VPS stop time, the exact ending time of the program would be governed by the VPS signal.

VII.2 The wording of Claim 1 was very broad. It was, therefore, possible to read the claim onto the document D3 in at least two different ways and thus deprive the subject-matter of said claim novelty.

Having regard to the fact that claim 1 did not explain in which way the determining means functioned and, in particular, did not identify the term "preset program code" in the expression "setting the preset program code", it appeared to be possible to read the claim already on the channel set-up mode according to D3 (page 7, "Speichern der Fernsehprogramme", see in particular point 5). In all recording systems, including that of the patent, it was apparently necessary, when a program was preset, to set the channel transmitting the program to be recorded. Apparently a "channel code" was always part of the "preset program code". Thus, according to the channel set-up mode disclosed in D3 a "preset program code" was set when the channel was entered, whereupon it was detected and indicated whether there was a VPS signal present in the current transmission. Therefore, the arrangement according to D3 contained determining and indicating means as identified in claim 1 of the patent.

Claim 1 could also be read onto the program presetting mode according to D3 (page 10 "Aufnahme mit Schaltuhr" see, in particular, point 2). It was true that, when the channel was selected according to this mode of D3, the corresponding VPS indication on the display, showing whether the channel transmitted a VPS signal, was derived from a memory. However, having regard to

the broad wording of claim 1, this wording could be construed to mean that even the arrangement according to D3, displaying the VPS indication derived from a memory, detected whether the corresponding channel at the time of presetting the program code contained a VPS signal. This must also have been the intention of the arrangement of D3, otherwise such VPS indication during the program presetting operation was meaningless.

Thus, it appeared that the subject-matter of claim 1 lacked novelty.

VII.3 However, should the Board still take the view that claim 1 was novel, the appellant was of the opinion that the subject-matter of claim 1 lacked inventive step.

Having regard to the said annex of D3 ("Die VPS-Information"), it was known that a VPS signal of a program could be detected during the recording of said program. Since, it was known for the skilled person to have the possibility to detect a VPS signal after starting the recording, thus having an up-to-date information about the VPS signal of the currently recorded program, the skilled person would seek to make use of this possibility during the presetting operation of the program code. Thus, the subject-matter of the claim was obvious.

Moreover, it would have been obvious to arrive at the subject-matter of claim 1 having regard to the mode of setting a program to be recorded in the instantaneous mode according to D3 (cf. page 9 under "Sofort-Aufnahme") in connection with the application of the VPS detection according to the said annex ("Die VPS-Information"). Thus, when an instantaneous recording was to be performed, the channel had to be selected (cf. D3, page 9, "Sofort-Aufnahme", point 1),

the recording had to be started (id. point 2), the VPS indication (starting time) had to be displayed by operating the VPS button (id. point 4) and finally the stop time had to be input. Thus, also according to D3 it was known to detect the VPS code on the currently received channel during setting a preset program code, since the stop time, being part of the preset program code, was preset.

VIII. In response thereto the respondents contested the arguments brought forward by the appellants and in summary argued in the following way:

In D3, in principle, three different "programming modes" had been disclosed. There was disclosed a channel set-up mode (D3, page 7, "Speichern der Fernsehprogramme"). Moreover, beside the instantaneous (manual) mode, a mode for presetting programs to be recorded (D3, page 10, "Aufnahme mit Schaltuhr") had been disclosed. Finally, a mode had been disclosed, which during a current recording could be used to enter the VPS stop time of a program. It was pointed out that only during the channel set-up mode and during the recording mode was it possible to detect whether a VPS signal was present in the signal currently broadcast.

Said teaching corresponded to the normal view the skilled person had of these things. Thus, the skilled person would not mix up the channel set-up mode with the mode for presetting programs. It was quite clear to him that these modes related to different problems.

Claim 1 as granted was sufficiently clear and was directed to presetting programs to be recorded and did not deal with aspects that could arise during a different mode of operation of a video tape recorder. Therefore, claim 1 was novel.

Moreover, the invention had an inventive step. The attempts of the appellants to attack the inventive step of the invention were not successful, since in their argumentation the appellants started from a point, from which it was not possible to arrive at the invention. The mode of D3 which during current recording allowed the setting of a VPS stop time could not be compared to the true program presetting mode. The operation of the "instantaneous key" which started the recording according to that mode was not presetting. Moreover, a VPS button had to be operated separately from said instantaneous key in order to get the VPS indication; thus a similarity in relation to the invention was not present.

While in the presetting program mode of D3 the VPS indication was fetched from a memory, the invention used a fresh VPS indication detected during the presetting of a program, which of course was advantageous, since changes of the VPS codes were quite possible during periods of months or even years after a channel set up.

IX. The appellants requested that the decision under appeal be set aside and the patent revoked.

The respondents requested that the appeal be dismissed and that the patent be maintained as granted (Main Request) or on the basis of claim 1 of the Auxiliary Request filed on 3 December 1996.

### Reasons for the Decision

1. The appeal complies with the requirements of Articles 106 to 108 EPC as well as Rule 64 and is, therefore, admissible.

2. *Interpretation of claim 1 of the patent as granted  
(main request)*

During proceedings before the different instances of the EPO, it often happens that new pertinent documents are cited with the result that the core of the claimed invention has to be changed and also the corresponding problem to be solved appears in a modified form. In such cases often new essential features must be added to the claim in order to clearly identify the solution and to distinguish the invention from the prior art. Having regard to the different arguments used to attack the novelty of the claim, it appears that the appellants, indeed, are of the opinion that such a situation as described has arisen in this case. It is, therefore, appropriate to investigate as exactly as possible the extent of protection the wording of claim 1 is given in the invention.

In the proceedings before the Board, the feature, "determining means", defined in the third paragraph of claim 1, has been the subject of differing interpretations. The appellants have stated that said wording was very general and that there was no information in the claim how said determining means function. Moreover, the claim did not at all define the expression "preset program code".

The Board is inclined to accept the suggestion of the respondents that, in the technical field concerned, there is a clear distinction made between the channel set-up, i.e. storing channels in correspondence to the program position, and the operation of presetting the program to be recorded. This is also supported by D3, which describes these two different operations in two different "Chapters", the channel set up on page 7 ("Speichern der Fernsehprogramme") and the presetting of the programs to be recorded on page 10 ("Aufnahme

mit Schaltuhr"). Also, the present application is not in conflict with said interpretation. The introductory part of the application describes a prior art video tape recorder (according to figure 1), whereat the function of the described arrangement is explained when the program to be recorded is preset, which operation substantially corresponds to the program presetting operation described in D3.

The Board also notes that the operations of setting the preset program code according to both D3 and the prior art (as well as the embodiments of the invention) described in the present patent involve different operating steps, i.e. the input of channel and starting time and in certain cases also the stop time. Moreover, such separate steps can in turn be divided up into substeps as can be learnt from D3, page 10, in that the + and keys are used repeatedly to get the correct time or channel. Thus, it appears that said setting operation normally is composed of different steps and can be extended over a certain time period. The Board, therefore, comes to the conclusion that the expression in the claim, "the time of setting the preset program code", means the time period used for performing the different steps of the said setting operation.

Moreover, the beginning of the feature "determining means", defined in the third paragraph of claim 1, i.e. "determining whether or not the VPS code is included in a broadcasting signal of said preset channel at said time period", is to be understood in the way that said predetermining is made during said time period.

Moreover, it is understood that the mentioned "a broadcasting signal of said preset channel" in the determining means feature is the received signal of the channel which is just being preset in order to record a program.

This is because the "determining means" feature of the third paragraph of claim 1 in fact refers back to the second paragraph wherein it is made clear that the mentioned setting means are used "for setting a preset program code effective to preset a channel", i.e. said means are in reality used to set a preset program of a selected channel. Thus, in this cited phrase in the second paragraph of claim 1, "a preset program code" corresponds to and is used to preset "a channel". Therefore, in the third paragraph "the preset program code" corresponds to and is used to preset "said preset channel". This, however, must mean that the said "a broadcasting signal of said preset channel" in the third paragraph is the signal just received on the channel which is being preset.

3. *Novelty*

Thus, the "determining means" in the third paragraph of claim 1 have to be interpreted in the following way:

"determining means for determining during the time period of setting the preset program code by said preset program code setting means, whether or not the VPS code is included in the just received broadcasting signal of the channel which is being preset, for determining, whether or not recording based on the VPS code is possible".

As the Board has made clear under reason 2 above, there is a clear technical difference between the operation of channel set up and presetting of programs to be recorded. As has been shown by the Board, the subject-matter of claim 1 relates only to the operation of presetting a program to be recorded. Moreover, present claim 1 suggests that during the setting of the preset program code the received signal of the preset channel is detected. Therefore, the parts of D3

relating to channel set up (page 7 of D3), instantaneous recording of a program (page 9 of D3) and setting a stop time during recording (annex of D3) cannot be used for an attack against novelty of the subject-matter of the claim. The mode of presetting a program to be recorded according to D3 (cf. page 10 of D3), moreover, does not disclose that the currently received signal of the channel to be preset is detected. The subject-matter of claim 1, therefore, is new and meets the requirements of Article 54(2) EPC.

4. *Inventive step*

When attacking the inventive step of the invention, the appellants start out from a mode of operation of the video apparatus according to D3 which concerns current recording (page 9 of D3 and the annex), at which the operator may allow the VPS signal to take over the control of stopping the recording. However, the Board does not agree with the argumentation of the appellants that it would be obvious to arrive at the invention from that prior art. In fact, it appears, even, difficult to find an objective problem to be solved which would not be too artificial when starting from that proposed part of the document.

Starting from the video tape recorder as disclosed in D3 in general (thus, the teaching of all cited parts of D3), the Board could see an objective problem to be solved in the general desire to make the recording still more reliable.

However, that such a desire would in an obvious way lead to the invention as defined by claim 1 cannot be accepted. During the recording mode of D3, referred to by the appellants, the tuner is in the switched-on state and is tuned to the channel which is being recorded. Thus, the VPS signal, when present, is always

received by the receiver and can be detected by the recorder. This situation appears to be very different from that which occurs during the presetting of programs. As has already been pointed out by the Opposition Division, it is not normally to be expected that the tuner is switched on and tuned to the preset channel to be recorded during the time of setting a preset program code; normally, the tuner would be in the switched-off state and the VPS signal would not be available for detection. Also from the view of the operator these two operations are quite different. When the operator during current recording, according to D3 (the annex), decides to give over the control of stopping the recording to the VPS signal, the recording is continued to the end of the program. On the contrary when presetting a program to be recorded, as the first step, the tape to be used has to be inserted and, as the last step of the presetting operation, the video recorder has to be switched off (point 10, page 11 of D3), since the recording can only be started from a switched-off state.

Moreover, the Board cannot see that the channel set-up mode generally or according to the teaching of D3 in any way would give the skilled person the idea of the invention. At the channel set up necessarily all channels have to be tuned and accordingly the corresponding VPS signals must be present on the channels and can be detected.

Thus, the skilled person trying to make the recorder still more reliable for recording does not find any indications in the prior art for choosing the way of solving the problem as has been proposed by claim 1 of the patent. Would the skilled man, nevertheless, from

this prior art arrive at the idea that the VPS signal of the channel to be recorded, also, during the presetting operation of a program of said channel should be detected, the Board is of the opinion that this would, indeed, amount to an inventive step.

It is, moreover, noted that the original problem to be solved, given by the respondents in their application, was concerned with video recorders wherein, in the VPS program preset mode, it was not necessary to set the ending time of the recording. In that case, if said ending time had not been precisely set and if the VPS code was not multiplexed on the signal received, the VPS mode was automatically switched to the normal clock mode and, therefore, the normal mode was not performed correctly, e.g. the tape was run to the end. The original problem, therefore, in such a case was to provide a program preset control circuit capable of indicating to a user that recording in a VPS program preset mode was impossible, so that the ending time was correctly set (cf. Column 3 of the present patent specification, lines 19 to 38).

Having regard to said original problem and the teaching of D3, it appears that the skilled person would never have used that document in respect of said problem, because according to D3, when presetting in the VPS program preset mode, both the starting and the stopping times of a recording have always to be preset (cf. pages 10 and 11 of D3, in particular, points 3 and 6) and thus the mentioned original problem does never occur.

5. Thus, the subject-matter of claim 1 as granted is not obvious to a skilled person and the invention thus claimed is considered to meet the requirements of Articles 52(1) and 56 EPC.

This means that the respondent's main request is allowable; consequently there is no need to consider the auxiliary request.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

P. K. J. van den Berg