Datasheet for the decision of 17 July 2007

Case Number: T 0174/06 - 3.5.03
Application Number: 96200353.9
Publication Number: 0727880
IPC: E05B 49/00
Language of the proceedings: EN

Title of invention:
Improved remote control system, for transmitting coded signals, provided with a service transmitter able to self-learn codes from other transmitters

Patentee:
NICE SpA

Opponent:
Hörmann KG Antriebstechnik

Headword:
Remote control system/NICE SpA

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
"Added subject-matter - main and auxiliary requests (yes)"

Decisions cited:
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Catchword:
-
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DECISION of the Technical Board of Appeal 3.5.03 of 17 July 2007

Appellant: NICE SpA
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Decision under appeal: Decision of the opposition division of the European Patent Office posted 6 December 2005 revoking European patent No. 0727880 pursuant to Article 102(1) EPC.

Composition of the Board:
Chairman: R. Menapace
Members: F. van der Voort
A. J. Madenach
Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division revoking European patent No. 0 727 880.

II. The proprietor (appellant) lodged an appeal against this decision and requested that the decision be set aside and the patent be maintained on the basis of claims of either a main or an auxiliary request, both requests as filed with the statement of grounds of appeal. In relation to the last feature ("in case of a contractor combination ...") of claim 1 of each of these requests, the appellant referred to the flow diagram of Fig. 11 and the corresponding passage in the description as providing a basis for this feature. Oral proceedings were conditionally requested.

III. In response to the statement of grounds of appeal, the respondent (opponent) filed a reply and requested that the appeal be dismissed. Oral proceedings were conditionally requested. The respondent argued, inter alia, that the features of claim 1 of both requests were more general than as disclosed by the application as filed. In particular, the features according to the last paragraph of claim 1 were more general than as shown in the above-mentioned flow diagram. Hence, claim 1 violated Article 123(2) EPC.

IV. The parties were summoned by the board to oral proceedings. In a communication accompanying the summons the board drew attention to issues to be discussed at the oral proceedings, including the question of whether the amendments made to the claims as granted complied with the requirements of Article 123(2) EPC.
V. In preparation for the oral proceedings the appellant filed with a letter received on 21 June 2007 a revised claim 1 of a main request and of five auxiliary requests, which replaced all previous requests.

VI. Oral proceedings were held on 17 July 2007. The appellant requested that the decision be set aside and the patent be maintained on the basis of one of the six sets of claims filed on 21 June 2007 in the indicated order of preference, a description still to be adapted and the drawings as granted. The respondent requested that the appeal be dismissed. At the end of the oral proceedings the board's decision was announced.

VII. Claim 1 of the main request reads as follows:

"Remote control system comprising:
- a remote control receiver (18) provided with a non-volatile memory, and
- a service device (30) comprising:
  - a microprocessor (38),
  - a transmission unit (54),
  - a broad band and low gain receiver (46) able to receive coded radio signals and to detect their codes,
  - a non-volatile memory (42) able to store a code detected by the device receiver (46),
  - a push button assembly (32, 33) able to send control signals to the microprocessor (38) for giving directions relating to
    - code reception by the device receiver (46),
    - code record into the device memory (42),
    - code deletion from the device memory (42) of preceding no more useful codes, and
- reading of codes stored into the device memory (42) for their sending with a remote control signal to the transmission unit (54) in order to forward them as new codes to be stored into the non-volatile memory of the remote control receiver (18) or in order to transmit them as codes recognizable by the receiver (18),

CHARACTERIZED IN THAT

the microprocessor (38) is adapted to perform:

- an operation (140) of keyboard checking for a digit combination on said push button assembly (32, 33), and a decision step (142) of valid digit combination from which an access combination or a contractor combination is detected, said decision step (142) prosecuting
  - in case of an access combination, to a program portion able to manage the transmission of codes recognizable by the receiver (18),
  - in case of a contractor combination, to a program portion able to manage the code reception by the device receiver (46), code record into the device memory (42) and code deletion from the device memory (42) of preceding no more useful codes, reading of codes stored into the device memory (42) for their sending with a remote control signal to the transmission unit (54) in order to forward them as new codes to be stored into the non-volatile memory of the remote control receiver (18)."

Claim 1 of the first auxiliary request is identical to claim 1 of the main request, except for the term "a push button assembly (32, 33)" in the preamble being replaced by "a keyboard (32, 33)".

Claim 1 of the second auxiliary request is identical to
claim 1 of the first auxiliary request, except for the passage "or in order to transmit them as codes recognizable by the receiver (18)" in the preamble being deleted.

Claim 1 of the third auxiliary request reads as follows:

"Remote control system for gates and/or barriers comprising:
- a remote control receiver (18) provided with a non-volatile memory, and
- a service device (30) comprising:
  - a microprocessor (38),
  - a transmission unit (54),
  - a broad band and low gain receiver (46) able to receive coded radio signals and to detect their codes,
  - a non-volatile memory (42) able to store a code detected by the device receiver (46),
  - a keyboard (32, 33) able to send control signals to the microprocessor (38) for giving directions relating to
    - code reception by the device receiver (46),
    - code record into the device memory (42),
    - code deletion from the device memory (42) of preceding no more useful codes, and
    - reading of codes stored into the device memory (42) for their sending with a remote control signal to the transmission unit (54) in order to forward them as new codes to be stored into the non-volatile memory of the remote control receiver (18),

CHARACTERIZED IN THAT
the microprocessor (38) is adapted to perform:
an operation (140) of keyboard checking for a digit
combination on said push button assembly (32, 33), and a decision step (142) of valid digit combination from which an access combination, i.e. a combination by which one of the barrier opening or closing keys has to be actuated, or a contractor combination, i.e. a digit combination serving to the personnel of the installation and maintenance service to be recognized, is detected, said decision step (142) prosecuting
- in case of an access combination, to a decision step checking whether the digit combination corresponds to the opening and closing keys and, if so, to an operation step for the transmission of codes recognizable by the receiver (18);
- in case of a contractor combination, to a program portion able to manage the code reception by the device receiver (46), code record into the device memory (42) and code deletion from the device memory (42) of preceding no more useful codes, reading of codes stored into the device memory (42) for their sending with a remote control signal to the transmission unit (54) in order to forward them as new codes to be stored into the non-volatile memory of the remote control receiver (18)."

Claim 1 of the fourth auxiliary request is identical to claim 1 of the third auxiliary request, except for the addition of the following feature in the last paragraph after "remote control receiver (18)"

"the change of the contractor combination, the change of the combination for a gate opening key, the change of the combination for the gate closing key, the recording of a radio signal for the gate opening key and the recording of a radio signal for the gate closing key,"
the deletion of a radio signal for the gate opening key, and the deletion of a radio signal for the gate closing key."

Claim 1 of the fifth auxiliary request is identical to claim 1 of the fourth auxiliary request, except for the addition of the following feature in the characterizing portion before "the microprocessor (38)":

"the service device (30) is adapted to effect:
- firstly an operation step (130) for deactuation of all the inputs of the microprocessor,
- then an operation step (132) for inhibiting the power supply of the peripheral units of the microprocessor,
- then an operation step (134) for resetting the microprocessor,
- then an operation step (136) for turning-on illumination of the of the [sic] keyboard (32), the non-volatile memory (42) and the receiver (54), and
- and a decision step (142) to see if a 5 second time is expired;
and in that"

Reasons for the Decision

1. Amendments - Article 123(2) EPC

1.1 Claim 1 of each of the requests includes the feature that the microprocessor is adapted to perform a decision step which, in case of a contractor combination, is prosecuted by a program portion able to manage:
- the code reception by the device receiver (46);
- code record into the device memory (42);
- code deletion from the device memory (42) of preceding no more useful codes;
- reading of codes stored into the device memory (42) for their sending with a remote control signal to the transmission unit (54) in order to forward them as new codes to be stored into the non-volatile memory of the remote control receiver (18).

1.2 The appellant argued that this feature was based on the application as originally filed for the following reasons:

The feature in question expressed in words what was shown in the program flow-chart of Figs. 10 and 11, it being clear to the skilled reader that those steps which were shown in the flow-chart but were not referred to in the claim, for example steps 130 to 138, were not essential to the technical problem underlying the present invention as set out in col. 1, lines 31 to 59, of the application as published. Further, the detection of an invalid digit combination as shown in Fig. 10 at step 142 was implicitly included in the claim, since the claim specified that the microprocessor was adapted to perform a "decision step (142) of valid digit combination from which an access combination or a contractor combination is detected", which implied that an invalid digit combination would also be detected. Furthermore, it was clear to the skilled reader that the steps of "code record" and "code deletion" corresponded to the steps "radio signal record" and "radio signal delete" in Fig. 11.

The appellant further argued that the feature in question was based on claim 1 as originally filed and
was again included in the preamble of present claim 1. Even though in the characterizing portion the feature was referred to in the context of a detection of a contractor code, it was clear from the application as filed that an accession combination would only have permitted remote control operations of the access barrier by actuating one of the barrier opening and closing keys, see col. 9, lines 7 to 10 of the application as published, and that, consequently, it was "implicit by exclusion" that all other operations would require the detection of a contractor combination as referred to in present claim 1.

1.3 The respondent argued that prior art documents on file showed that code recording could also be carried out without it being necessary that a contractor code had been entered. Further, referring to col. 8, lines 33 to 35 of the application as published, Figs. 10 and 11 only related to the operation of the service device. Consequently, the flow-chart did not provide a basis for the reading of codes stored into the device memory for their sending with a remote control signal to the transmission unit in order to forward them as new codes to be stored into the non-volatile memory of the remote control receiver, since this involved the storage of codes at the remote control receiver, which is however not part of the service device.

1.4 For the reasons set out below, the board is of the view that the above-mentioned feature (see point 1.1) is not originally disclosed.

1.4.1 The description as originally filed refers to a contractor combination only in the passages relating to
Figs. 10 and 11, i.e. col. 8, line 32 to col. 9, line 57 of the application as published. As shown in Fig. 10, if, at step 142, it is determined that a contractor combination has been entered, the procedure continues at "A" to a decision step 160 (see Fig. 11) in which it is decided which one of eight operations, numbered 1 to 8, will subsequently be executed. Four of these operations, i.e. operations 4 to 7 which correspond to steps 168, 170, 172 and 174, respectively, arguably relate to the storage of a code received with the radio signal and to the deletion from the service device memory of such a code (see also col. 3, lines 55 to 58, of the application as published). However, present claim 1 does not include all of the operations which can be executed after a contractor combination has been entered as shown in Fig. 11. In particular, the operations relating to the replacement of the combination for the gate opening or closing key (steps 162 and 164) and to the replacement of the contractor combination (step 166) have been omitted in claim 1 of the main request and of the first to third auxiliary requests. Claim 1 of these requests therefore defines the program portion concerned in more general terms than as disclosed with reference to Fig. 11.

Conversely, present claim 1 of each request defines additional operations which the program portion is able to manage in case of a contractor combination, which, however, are not shown in Fig. 11, namely the code reception by the device receiver and the reading of codes from the device memory in order to forward them to the remote control receiver.

Further, the board notes that claim 1 of both the fourth
and the fifth request does include the operations corresponding to the steps 162, 164, 166, 168, 170, 172 and 174 of Fig. 11. However, these steps are defined in addition to the code recording and code deletion, which then have no counterpart in Fig. 11.

1.4.2 Neither is a basis for the above-mentioned amendments to claim 1 of each of the requests apparent from other parts of the application documents as originally filed.

The appellant's argument that the feature in question is based on claim 1 as filed is not convincing, since in claim 1 as filed the code reception, code recording, code deletion and the reading of codes were referred to only as part of a definition of a push button assembly, namely that the push button assembly must be able to send the corresponding control signals, and were not referred to in relation to a program portion which is able to manage these operations in case of a contractor combination being detected, as in present claim 1.

1.4.3 The appellant's argument that a contractor combination is always required in order to carry out an operation other than the opening or closing of the barrier is not convincing either, since the application itself suggests that some of the operations in which the content of the service device memory is modified can be carried out without it being necessary that a contractor combination is entered. In particular, at col. 6, lines 10 to 19, of the application as published it reads:

"A contact pair 77, connected from pin L6 of the microprocessor 38 to an input Ck of the EEPROM memory 42, and manually actuable, allows a complete resetting of
the memory 42 on demand of the contractor, for example for proceeding \[sic\] to a replacement of all the codes inserted into the memory 42. Of course, the manual push button for actuating the contact pair 77 does not have to be accessible by the usual user of the service device 10, but just by the contractor to avoid misuse and control mistakes."

and at col. 7, lines 5 to 10, it reads:

"In addition, to allow the record of the codes to be selflearned \[sic\], a jumper 65, connected inside the device and actuable by just a contractor, connects to ground the port L4 just for the time necessary to the record of the code to be selflearned into one of the EEPROMs 42a or 42b."

In the board's view, the accessibility of the manual push button and/or the jumper would not have been an issue in relation to misuse by persons other than the contractor if the entering of a contractor combination would in any case have been required.

1.5 The board concludes that, due to the presence of the above-mentioned feature (see point 1.1 above) in claim 1 of each of the requests, claim 1 of each of these requests defines a combination of features which is not directly and unambiguously derivable from the content of the application as filed, contrary to Article 123(2) EPC.

1.6 For the above reasons, none of the requests is allowable.

2. There being no allowable request, it follows that the appeal must be dismissed.
Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano R. Menapace