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**Datasheet for the decision  
of 24 September 2018**

**Case Number:** R 0002/18

**Appeal Number:** T 2136/16 - 3.5.04

**Application Number:** 03077693.4

**Publication Number:** 1381231

**IPC:** H04N21/422, H04N21/4788,  
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**Language of the proceedings:** EN

**Title of invention:**  
Interactive television program guide with remote access

**Patent Proprietor:**  
Rovi Guides, Inc.

**Opponents:**  
Virgin Media Limited

**Headword:**  
Petition for review

**Relevant legal provisions:**  
EPC Art. 112a(2)(c)  
EPC R. 106

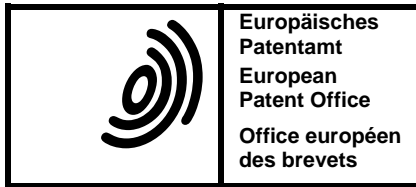
**Keyword:**  
Petition for review - clearly unallowable  
Fundamental violation of Article 113 EPC (Article 112a(2)(c)  
EPC) - no

**Decisions cited:**

R 0013/14, R 0008/15

**Catchword:**

-



**Große Beschwerdekammer**  
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Case Number: R 0002/18

**D E C I S I O N**  
of the Enlarged Board of Appeal  
of 24 September 2018

**Petitioner:**  
(Patent proprietor)

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(Opponent)

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**Decision under review:**

**Decision of the Technical Board of Appeal  
3.5.04 of the European Patent Office of  
11 September 2017.**

**Composition of the Board:**

**Chairman:** c. Josefsson  
**Members:** W. Sekretaruk  
G. Pricolo

## Summary of Facts and Submissions

I. The patent proprietor's petition for review of 31 January 2018 is directed against the decision of Board of Appeal 3.5.04 in case T 2136/16. With that decision the board dismissed the patent proprietor's appeal against the decision of the opposition division revoking European patent EP 1381231. The board's written decision was posted to the proprietor's representative on 12 December 2017. The petition for review is based on Article 112a(2)(c) EPC. The petitioner asserts that two fundamental violations of its right to be heard occurred in the appeal proceedings.

***First violation: the Board ignored a central argument of the proprietor regarding the disclosure of document D10/D11, which was brought forward repeatedly.***

II. The petitioner's core argument is that it had consistently argued that the word "alarm" was only discretely mentioned twice in Document D10 (English translation of WO 98/43416 A1) / D11 (Japanese original of WO 98/43416 A1) at paragraphs [0024] and [0025]. A proper construction of its meaning, including a reference to paragraphs [0008] and [0015] of this document, could not result in the meaning of "alarm" being a notification intended to be issued to a person rather than to another electronic device. Consequently, D10/D11 failed to provide a clear and unambiguous disclosure of a reminder in the sense of the patent in suit. As all substantive requests (main, 3rd and 4th auxiliary requests) contained a feature "having a reminder function for a selected listing...", a correct

interpretation of respective claims 1 of the requests would have resulted in acknowledging a further difference between the patent and D10/11. This would have changed the problem solved by the invention, with the consequence that the presence of an inventive step could not have been denied.

The Board of Appeal ignored this core argument und thus violated the patent proprietor's right to be heard. Despite essentially correctly reflecting the Proprietor's presentation of its core arguments, a discussion of the disclosure of paragraphs [0008] and [0015] was missing.

***Second violation: the board did not provide a reasoned statement in its decision as to why it found against the proprietor regarding the disclosure of document D10.***

- III. The reasons of the decision of the Board of Appeal did not contain any passage reflecting the patent proprietor's arguments on the disclosure of document D10/D11 relating to the explanations of the term "alarm" given in paragraphs [0008] and [0015] in the description of this piece of prior art.
- IV. In a communication accompanying the summons to oral proceedings, the Enlarged Board informed the petitioner of its provisional view that the petition was clearly not allowable. With its letter of 24 August 2018 the petitioner took issue with that opinion.
- V. At oral proceedings held on 24 September 2018 the petitioner stressed that the term "considered in its

overall context" as used in the decision of the Board of Appeal on page 21, 2<sup>nd</sup> paragraph, lines 8,9, was in no way sufficient to prove that the patent proprietor's arguments were really taken into account. Paragraph [0015] of document D10/D11 provided contradicting disclosure. The Board of Appeal did not show that it considered the Patent proprietors arguments. From no part of the decision could it be deduced that the Board of Appeal dealt with the core argument: Paragraphs [0008] and [0015] of D10/D11 proved that paragraphs [0024] and [0025] could in no way be interpreted such that an alarm was going out to a user. This was clear in particular when reading paragraph [0015] that in D10/D11 two devices communicated. This could only mean that the board had not taken the petitioner's arguments into account.

VI. The petitioner requests

1. to review the decision of the Technical Board of Appeal dated December 12, 2017 pursuant to Article 112a EPC;
2. to set aside the decision of the Technical Board of Appeal and reopen the proceedings before the Technical Board of Appeal.

### **Reasons for the decision**

1. The petition meets the requirements with respect to the time limit and payment of the petition fee.

2. The petition complies with Rule 106 EPC. An objection in respect of the alleged procedural defects was not possible as the alleged deficiencies only became apparent from the reasons of the decision.

***First alleged violation (see point II above)***

3. With this part of the petition the petitioner basically complains that its arguments concerning claim construction were not fully taken into account by the Board of Appeal. The crucial substantive issue is how the feature "by issuing an alarm" in paragraphs [0024] and [0025] of D10/11 is understood by the person skilled in the art. The Enlarged Board of Appeal understands the Petitioner's argument such that the denial of its right to be heard follows from the disregarding of its submissions concerning claim construction, i.e. the relevance of the disclosure of paragraphs [0008] and [0015] of D10/11.

***The principles***

- 3.1 The Enlarged Board of Appeal refers to its previous decision R 8/15. The catchword reads:
  1. *Article 113(1) EPC implies that decisions of the EPO boards of appeal should adequately state the reasons on which they are based in order to show that the parties were heard. A party must be able to examine whether, in its view, the board has afforded it the right to be heard in order to be in a position to decide on whether or not to file a petition under Article 112a(2)(c) EPC (in force since 13 December 2007) for violation of*

*Article 113(1) EPC. One aspect of the right to be heard as covered by Article 113(1) EPC requires a board to consider a party's submissions, i.e. assess the facts, evidence and arguments submitted as to their relevance and correctness.*

*Article 113(1) EPC is infringed if the Board does not address submissions that, in its view, are relevant for the decision in a manner adequate to show that the parties were heard on them, i.e. that the Board substantively considered those submissions. (See Reasons, point 2.2.2.)*

2. *Assessing the completeness of a decision would usually be beyond the scope of scrutiny under Article 113(1) EPC. As to the reasons for a decision, Article 113(1) EPC must be interpreted more narrowly than, and thus is not a substitute in review proceedings for, the broader legal provisions embodied in Rule 102(g) EPC. Those provisions require a board to give reasons for its decision, but infringement thereof is not as such a ground for review. In other words: for the purpose of compliance with the right to be heard, reasons may be incomplete, but as long as they allow drawing the conclusion that the board, in the course of the appeal proceedings, substantively assessed a certain point being part of the procedure and that it found to be relevant, there will be no violation of Article 113(1) EPC. (See Reasons, point 2.2.3.)*

***The Petitioner's interpretation of the feature "alarm" in D10/11***



3.2 The relevant disclosure in D10/D11 can be found in paragraphs [0024] and [0025] which read:

*[0024] The timed reservation section 104 consists of a reservation data management section 105 for managing data regarding timed reservations and a time management section 106 for giving a notice by issuing an alarm or otherwise when the time of reserved operation arrives. The recording apparatus 110 consists of a user interface section 111 using an input instruction device, such as a remote control unit or a tablet, for conversing with the operator such as receiving recording or playback, timed reservation setting and display instructions; a communication interface section 112 for communicating AV data and control signals with other apparatuses (the satellite broadcast receivers 100a and 100b, and the monitor 120 in this case) via the bus 10; a VHF/UHF broadcast tuner section 113 for receiving VHF/UHF broadcast programs;*

*a timed reservation section 114 for processing timed reservations of VHF/UHF broadcast programs; a recording section 117 for recording AV data such as broadcast programs on a recording medium such as a magnetic tape or an optical disk; a playback section 118 for playing back AV data recorded on a recording medium; and a recording apparatus control section 119 for controlling the operations of the recording apparatus 110.*

*[0025] The timed reservation section 114 consists of a reservation data management section 115 for managing data regarding timed reservations and a time management section 116 for giving a notice by issuing an alarm or otherwise when the time of reserved operation arrives.*

According to the Petitioner, a proper interpretation has to be based on the disclosure of paragraphs [0008] and [0015], which read:

*[0008] However, the conventional timed reservation function allows the operator to make a timed reservation with each of the apparatuses involved, and each set V apparatus, in no way concerned with any other AV apparatus, merely executes an action such as outputting or starting to record AV data including video information and audio information irrespective of the state of use of the other AV apparatus. Therefore, when a timer reservation was to be set, the operator had to check for himself whether or not each apparatus would be available for operation when the reserved hours came.*

*[0015] Execution of the use of any apparatus is notified by the first AV apparatus and the second AV apparatus to each other at the time of, or a few minutes before, the execution of the use of the apparatus, to be followed by the execution of the use of the apparatus.*

The only conclusion that could be reached on the basis of paragraphs [0008] and [0015] was that the alarm of paragraphs [0024] and [0025] was issued to the apparatus. This went clearly against an assumption that the alarm was issued to a user, a prerequisite for a reminder function as claimed in the patent in suit.

*The Board of Appeal's view on this interpretation*

- 3.3 The Board's uncontested summary of the appellant's arguments and its answers

The Enlarged Board of Appeal refers to point 3.5 of the impugned decision (pages 20 and 21)

Appellant's arguments

*The appellant also argued that D11 was concerned with automating the co-ordination of two AV apparatuses. The passages in paragraphs [0024] and [0025] had to be understood in that context as referring to an electronic communication by "giving a notice" when the appropriate time arrived. There was no disclosure that an alarm was issued to the user. This would have made no sense, because D11 concerned unattended recording. There was also no scheduled reminder that was issued to the user at a specified time. The appellant further argued that the word "alarm" had been given an emotional connotation that was neither present nor intended in the Japanese text D11. It did not contest that the translation of the corresponding word in D11 was correct, but this did not imply that the alarm was issued to a user. Instead, the word "alarm" was also used in computer science, where it did not have an emotional connotation but simply referred to an electronic notification.*

The Board of Appeal's reasoning

*The board was not convinced by these arguments. It is correct that D11 is directed to the co-ordination of*

several AV devices (see paragraph [0001]). This coordination requires an electronic communication between the devices, which is described as being effected when the reservation is made. The reservation is made in a timely manner to check for any reservation conflicts (see figures 5 and 10 together with paragraphs [0044] to [0047]). **In contrast, the alarm of paragraphs [0024] and [0025] is issued "when the time of reserved operation arrives", i.e. it serves no apparent technical purpose because the reservation data have already been transmitted to the timed reservation sections of the involved devices. The alarm is therefore distinguished from the transmission of the reservation data and conflict resolution. Hence, the board confirms the interpretation that an alarm "addresses the user of the device" as stated in the decision under appeal (see Reasons, point 14.9). The board takes the fact that user interface elements are described in conjunction with the alarm (see paragraph [0024]) as a further indication that the alarm is directed to the user.**

Appellant's arguments

*In the appellant's view, this interpretation of the wording "alarm" was based, at least in part, on an alleged emotional connotation of the term and was incorrect.*

The Board of Appeal's reasoning

*According to the established case law of the boards of appeal, determining the information content means interpreting what comprises the state of the art. For*

*this purpose the technical disclosure in a prior-art document must be considered as a whole or **in its overall context** (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition, 2016, section I.C.4.1). The board did exactly this, i.e. it arrived at its interpretation by determining the information content of paragraphs [0023] and [0024] of D11 in their context.*

The Enlarged Board of Appeals is of the opinion that the aforementioned passages prove that the Board of Appeal at least by reference to the context of paragraph [0024] considered the appellant's core argument without explicitly mentioning paragraphs [0008] and [0015] of D10/D11 in this respect. The passage explicitly explains why the patent proprietor's technical interpretation that D10/D11 only discloses a communication of two devices was found incorrect. It distinguishes between "the transmission of the reservation data and conflict resolution" (the communication of the two devices) and an "alarm that addresses the user of the device". Thus the Board of Appeal has met the standard set out in R 8/15 (see the catchword quoted above, at point 3.1). In the light of the foregoing, the Enlarged Board of Appeal cannot see a fundamental violation of the petitioner's right to be heard.

***Second alleged violation (see point III above)***

4. The board follows the reasoning in decision R 13/14, point 2.4.5, third paragraph:

*"It must be remembered that it is not the purpose of petition for review proceedings to evaluate whether or not the reasons selected by the board are appropriate. This was made clear from the beginning in points 2.1 and 4 of the reasons in R 1/08 of 15 July 2008, which also referred to the travaux préparatoires for the EPC 2000 and has since been endorsed by the Enlarged Board, for example in R 9/14 of 24 February 2014 and R 4/11 of 16 April 2012. What matters with respect to petitions for review is whether the reasons given for the decision came as a surprise for the party."*

Consequently, according to these principles and those enunciated in R 8/15 (see the catchword above at point 3.1), the only decisive question is whether or not the petitioner's relevant submissions and arguments were taken into account when taking the decision. The Enlarged Board of Appeal is not convinced that the Board of Appeal committed an error in this respect (see point 3, *supra*).

**Order**

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

The petition is rejected as clearly unallowable.

The Registrar:

The Chairman:

P. Cremona

C. Josefsson