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DECISION
of 23 February 2004

Case Number: T 0282/00 - 3.5.1

Application Number: 89912778.1

Publication Number: 0464025

IPC: H04N 5/445

Language of the proceedings: EN

Title of invention:
TV data capture device

Patentee:
YEE, Keen Yoke

Opponent:
Koninklijke Philips Electronics N.V.

Headword:
TV Data capture/YEE

Relevant legal provisions:
EPC Art. 123(2), (3)
EPC R. 57a

Keyword:
"Inadmissible amendments - main and auxiliary requests (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0282/00 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 23 February 2004

Appellant:
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 19 January 2000
revoking European patent No. 0464025 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: S. V. Steinbrener
Members: R. Randes
P. Mühlens

Summary of Facts and Submissions

- I. This is an appeal against the decision by the Opposition Division to revoke European patent 0 464 025, the patent having been opposed on the grounds of lack of novelty, lack of inventive step, insufficient disclosure and added subject-matter.
- II. In its decision the Opposition Division found that the subject-matter of apparatus claim 1, the only independent claim, lacked inventive step with respect to document
- D1: "Computer Controlled Teletext (CCT)", Philips Technical Publication 112, 16 pages, bearing on the last side the remark "Date of release: 21 October 1983".
- III. In the statement of grounds of appeal the Patentee requested maintenance of the patent on the basis of amended claims according to a main and a first auxiliary request, both of which added an independent method claim 10. The Appellant also requested an opportunity to provide arguments in support of his submissions "if objections to them are raised later in these Appeal proceedings."
- IV. The independent claims according to the main request read as follows:
1. "Digital data capture apparatus used by a receiving party and operating in combination with a receiving TV set or monitor (24), including

receiving means (14) associated with the TV set or monitor (24) for receiving a broadcast composite signal including digital data representing unrelated subject matter topics, where the broadcast composite signal is not broadcast repeatedly in an endless loop format, extraction means (12) enabling the receiving party to extract digital data from the broadcast composite signal, a microprocessor (16) for controlling the extraction of digital data from the broadcast composite signal, a converter (22) for converting extracted digital data into video signals suitable for display on the screen of the TV set or monitor (24), and input means (26) for enabling the receiving party to interface with the microprocessor (16), characterised in that the extraction means (12) comprises means for detecting the subject matter of each subject matter topic regardless of its position in the broadcast composite signal, and means for extracting during a single scan of the broadcast composite signal all digital data from the broadcast composite signal corresponding to a randomly ordered unlimited number of unrelated subject matter topics arbitrarily selected by the receiving party, thereby enabling the receiving party to capture for display on the TV set or monitor (24) all digital information in said broadcast composite signal corresponding to an unlimited number of arbitrarily selected unrelated subject matter topics having no predetermined order or common element, where the digital data corresponding to the unlimited number of arbitrarily selected unrelated subject matter topics can be of any length, does not require repetition of information transmission, can be

extracted in a single scan of the information in the broadcast composite signal, and can be permanently stored, and further characterized by the inclusion of permanent storage means (18) for permanently storing the extracted data for a length of time determined by the receiving party, and memory means (20) communicating with the microprocessor (16) and storing programs therefor, whereby operation of the microprocessor requires no computer knowledge or programming by the receiving party."

10. "A method of capturing digital data including the steps of receiving a broadcast composite signal including digital data representing unrelated subject matter topics, where the broadcast composite signal is not broadcast repeatedly in an endless loop format, extracting digital data from the broadcast composite signal, and converting extracted digital data into video signals suitable for display on the screen of TV set or monitor, characterised in that the step of extracting digital data includes detecting the subject matter of each topic regardless of its position in the broadcast composite signal, and extracting during a single scan of the broadcast composite signal all digital data from the broadcast composite signal corresponding to a randomly ordered unlimited number of unrelated subject matter topics arbitrarily selected by the receiving party, thereby resulting in the capturing for display on the TV set or monitor all digital information in said broadcast composite signal corresponding to an

unlimited number of arbitrarily selected unrelated subject matter topics having no predetermined order or common element, where the digital data corresponding to the unlimited number of arbitrarily selected unrelated subject matter topics can be of any length, does not require repetition of information transmission, can be extracted in a single scan of the information in the broadcast composite signal, and can be stored, and further characterised by the inclusion of the step of storing the extracted data for a length of time determined by the receiving party."

The independent claims according to the first auxiliary request read as follows:

"1. Digital data capture apparatus used by a receiving party and operating in combination with a receiving TV set or monitor (24), including receiving means (14) associated with the TV set or monitor (24) for receiving a broadcast composite signal including digital data representing unrelated subject matter topics, where the broadcast composite signal is not broadcast repeatedly in an endless loop format, extraction means (12) enabling the receiving party to extract digital data from the broadcast composite signal, a microprocessor (16) for controlling the extraction of digital data from the broadcast composite signal, a converter (22) for converting extracted digital data into video signals suitable for display on the screen of the TV set or monitor (24), and input means (26) for enabling the receiving party to interface with the microprocessor (16),

characterised in that the extraction means (12) comprises means for extracting during a single scan of the broadcast composite signal all digital data from the broadcast composite signal corresponding to a randomly ordered unlimited number of unrelated subject matter topics arbitrarily selected by the receiving party, thereby enabling the receiving party to capture for display on the TV set or monitor (24) all digital information in said broadcast composite signal corresponding to an unlimited number of arbitrarily selected unrelated subject matter topics having no predetermined order or common element, where the digital data corresponding to the unlimited number of arbitrarily selected unrelated subject matter topics can be of any length, does not require repetition of information transmission, can be extracted in a single scan of the information in the broadcast composite signal, and can be permanently stored, and further characterised by the inclusion of permanent storage means (18) for permanently storing the extracted data for a length of time determined by the receiving party, and memory means (20) communicating with the microprocessor (16) and storing programs therefor, whereby operation of the microprocessor requires no computer knowledge or programming by the receiving party."

10. "A method of capturing digital data including the steps of receiving a broadcast composite signal including digital data representing unrelated subject matter

topics, where the broadcast composite signal is not broadcast repeatedly in an endless loop format, extracting digital data from the broadcast composite signal, and converting extracted digital data into video signals suitable for display on the screen of TV set or monitor, characterised in that the step of extracting digital data includes extracting during a single scan of the broadcast composite signal all digital data from the broadcast composite signal corresponding to a randomly ordered unlimited number of unrelated subject matter topics arbitrarily selected by the receiving party, thereby resulting in the capturing for display on the TV set or monitor all digital information in said broadcast composite signal corresponding to an unlimited number of arbitrarily selected unrelated subject matter topics having no predetermined order or common element, where the digital data corresponding to the unlimited number of arbitrarily selected unrelated subject matter topics can be of any length, does not require repetition of information transmission, can be extracted in a single scan of the information in the broadcast composite signal, and can be stored, and further characterised by the inclusion of the step of storing the extracted data for a length of time determined by the receiving party."

- V. No comments were received from the Respondent (Opponent) on the appeal.

VI. In a communication dated 7 May 2003 the Board set out its preliminary opinion that claim 1 of the main request did not appear to satisfy Article 123(2) EPC regarding added subject-matter. The Board also doubted whether the addition of a new independent method claim was occasioned by a ground of opposition, Rule 57a EPC. Also claim 10 of both requests appeared to contain added subject-matter, Article 123(2) EPC, since it did not contain features corresponding to all features of claim 1, the original application documents providing no basis for deleting these features. Moreover claim 10 of both requests appeared to cover the operation of apparatuses which did not fall within claim 1, so that the scope of protection had been extended, contrary to Article 123(3) EPC.

VII. Neither party replied to the communication within the time limit of 4 months set in the communication. Indeed no submissions had been received from either party by January 2004.

Reasons for the Decision

1. *The admissibility of the appeal*

The appeal fulfils all the requirements mentioned in Rule 65(1) EPC and is consequently admissible.

2. *The addition of a new independent method claim 10*

The patent according to both the main and auxiliary requests contains a new second independent claim 10 to a method. The Board is unable to see how such an

amendment is occasioned by a ground of opposition, since it is unsuited to overcoming an objection of non-patentability of the existing claims, sufficiency of disclosure or added subject-matter. The patent according to both requests consequently fails to satisfy Rule 57a EPC.

3. *The features of claim 10*

The method set out in claim 10 of both requests lacks method steps corresponding to at least the following apparatus features in the corresponding claim 1:

- (i) a microprocessor for controlling the extraction of digital data from the broadcast composite signal,
- (ii) input means for enabling the receiving party to interface with the microprocessor and
- (iii) memory means communicating with the microprocessor.

It is true that the replacement of an apparatus claim by a method claim could constitute a restriction of the claim. However, since claim 10 covers the operation of apparatuses not falling within claim 1, the scope of protection has also been extended, contrary to Article 123(3) EPC.

Moreover, the original application documents (see in particular page 7, first paragraph; page 9, last paragraph; the original independent claims and figure) do not provide a basis for deleting at least features

"i" and "iii", so that claim 10 according to both requests contains added subject-matter, Article 123(2) EPC.

4. *The amendments to claim 1 of the main request*

Claim 1 according to the main request now mentions "means for detecting the subject matter of each subject matter topic regardless of its position in the broadcast composite signal". The Board is unable to find a basis for this amendment in the original application, and consequently finds that claim 1 of the main request contains added subject-matter, Article 123(2) EPC.

5. *Conclusion*

The Board concludes that the patent according to both the main and auxiliary requests has been amended in a way contrary to the requirements of the EPC. Hence neither of the Appellant's requests is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

S. V. Steinbrener