

**Internal distribution code:**

- (A)  Publication in OJ  
(B)  To Chairmen and Members  
(C)  To Chairmen  
(D)  No distribution

**D E C I S I O N**  
**of 13 December 2005**

**Case Number:** T 0482/02 - 3.5.01

**Application Number:** 96911607.8

**Publication Number:** 0819354

**IPC:** H04N 5/445, H04N 5/50

**Language of the proceedings:** EN

**Title of invention:**  
Interactive program guide systems and processes

**Patentee:**  
United Video Properties, Inc.

**Opponent:**  
Interessengemeinschaft für Rundfunkschutzrechte GmbH  
Schutzrechtsverwertung & Co. KG

**Headword:**  
Program guide/UNITED VIDEO PROPERTIES

**Relevant legal provisions:**  
EPC Art. 56

**Keyword:**  
"Inventive step (no) "

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0482/02 - 3.5.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.01  
of 13 December 2005

**Appellant:** United Video Properties, Inc.  
(Proprietor of the patent) 7140 South Lewis Avenue  
Tulsa, OK 74136 (US)

**Representative:** Hale, Peter  
Kilburn & Strode  
20 Red Lion Street  
London WC1R 4PJ (GB)

**Respondent:** Interessengemeinschaft für  
(Opponent 01) Rundfunkschutzrechte GmbH  
Schutzrechtsverwertung & Co. KG  
Bahnstrasse 62  
D-40210 Düsseldorf (DE)

**Representative:** Eichstädt, Alfred  
Maryniok & Eichstädt  
Kuhbergstrasse 23  
D-96317 Kronach (DE)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 11 March 2002  
revoking European patent No. 0819354 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** S. Steinbrener  
**Members:** S. Wibergh  
E. Lachacinski

## Summary of Facts and Submissions

- I. This is an appeal against the decision of the opposition division to revoke European patent No. 0 819 354.
- II. By an intermediate decision dated 9 February 2005 the Board rejected the opposition filed by Opponent 02 Herbert Smith, London (GB) as inadmissible. It follows that Opponent 01 is the only respondent in these appeal proceedings.
- III. The respondent opposed the patent on the grounds that the invention was not new and did not involve an inventive step (Article 100(a) EPC). Among the documents cited in the notice of opposition were:
- D2: WO-A-91/00670  
D8: US-A-5 353 121.
- IV. According to the decision appealed the invention as defined in claims 1 and 10 of the patent as granted *inter alia* did not involve an inventive step with respect to D2.
- V. On appeal, the appellant (patent proprietor) requested that the decision be set aside and a patent be granted based on amended claims 1 to 18 filed together with the grounds of appeal.

Claim 1 read (omitting the reference signs):

An interactive program guide system for displaying program schedule information on a display, comprising a user input device and a control unit, wherein: said control unit is adapted to perform a restrictive search operation on said program schedule information based on a restrictive program selection criterion chosen using said user input device; characterised in that: said control unit is adapted to perform a nonrestrictive sort operation on at least a portion of said program schedule information based on a nonrestrictive program sort attribute chosen using said user input device, wherein said nonrestrictive program sort attribute defines an order in which said program schedule information will appear on said display, said nonrestrictive program sort attribute being transmitted by said service provider to said control unit; and said control unit is adapted to generate a resulting list of said program schedule information based on both said restrictive search operation and said nonrestrictive sort operation for display on said display.

Claim 10 was directed to a corresponding method for displaying program schedule information.

- VI. In a communication, the Board noted that it must be considered what technical problem any new features solved. The fundamental reason for sorting data was presumably that the human brain could more easily digest structured information. The mere idea to sort information thus appeared non-technical. Also the

choice of attributes appeared to have little technical significance. Thus, the opposition division's finding that the invention lacked an inventive step over D2 appeared justified.

VII. By letter dated 13 November 2005, the appellant filed amended claims 1 and 10 according to a first and a second auxiliary request.

According to claim 1 of the *first auxiliary request*, the nonrestrictive program sort attribute is chosen *in response to performing said restrictive search operation*.

According to the *second auxiliary request*, claim 1 is further limited by the features that:

- said program schedule information comprises a plurality of program listings each having an associated plurality of attributes, wherein each of said plurality of program listings has a first attribute and a smaller subset of said plurality of program listings has a second attribute, wherein said smaller subset comprises at least the portion of said program schedule information identified by said restrictive search operation;
- said control unit receives, from a service provider, a plurality of nonrestrictive sort attributes comprising said first attribute and said second attribute, wherein each of said plurality of nonrestrictive sort attributes defines an order in which said portion of said program schedule information will appear on said display.

VIII. Oral proceedings were held on 13 December 2005.

The appellant requested that the decision under appeal be set aside and the patent be maintained as amended on the basis of the main request as filed with the statement of grounds or alternatively on the basis of auxiliary requests 1 or 2 filed with the letter dated 13 November 2005.

The respondent requested that the appeal be dismissed.

IX. At the end of the oral proceedings the Board announced its decision.

### **Reasons for the Decision**

#### 1. *Admissibility of the appeal*

The appeal meets the requirements referred to in Rule 65(1) EPC and is, therefore, admissible.

#### *The appellant's main request*

#### 2. *Construction of claim 1*

2.1 Claim 1 defines an interactive program guide system for displaying (TV) program schedule information. The system comprises a display, a user input device (eg a remote control) and a control unit. One aim of the invention is to present the viewer with ordered channel information to facilitate the search for programs of interest. A "restrictive search operation" based on a selection criterion serves to pick out all programs

relating to a specified theme, eg all sports programs (cf paragraph [0070]). The retrieved programs are sorted in a "nonrestrictive sort operation" based on a chosen "nonrestrictive sort attribute". If for example this attribute is also "sport", the sports programs are grouped and displayed by game (baseball, soccer, etc.). The viewer can in this way sort the program list in accordance with offered sort attributes to obtain a preferred display listing.

2.2 A crucial feature in claim 1 is the "nonrestrictive program sort attribute". The appellant has explained that this attribute is an active characteristic by which the order of the information is defined. It is not merely a passive program characteristic but allows sorting according to a certain rule. The respondent, on the other hand, regards the sort attribute as any received program information which permits a classification, and thus ordering, of program information.

2.3 The limits on the interpretation of a claim feature are set by the disclosure. In paragraphs [0026] and [0031] of the patent-in-suit a distinction is made between "program schedule information", eg a program channel number, which allows programs to be classified into categories, and "operational parameters", in particular the nonrestrictive sort attributes. There is however no detailed description of the nonrestrictive sort attributes, what their format is or exactly what information they convey. The Board cannot see, for example, that the disclosure excludes the use of a (binary) number as sort attribute. By assigning a certain number to programs having similar data contents

a grouping may be achieved and the value of the number could define a group order. Thus, in view of the absence in claim 1 and the entire patent of a more precise technical definition of this feature, the Board finds that any identifier which permits programs to be sorted must be regarded as a "nonrestrictive program sort attribute" in the sense of claim 1.

3. *The prior art*

In the present decision D2 will be taken as the most relevant starting document. D2 discloses a system for transmitting and receiving television program information. The system extracts and stores only program information that satisfies predetermined filter criteria. To achieve this, the information contains 8-bit data fields referred to as "type" and "subtype" which define the program contents. Examples are the types "sports" and "movies" and the subtypes "basketball", "baseball", "hockey" and "comedy" (cf figure 2 and page 9, last paragraph). After downloading, the shows and times may be "sorted by type, or by other criteria, so that the types of shows desired may be viewed without further subset searches" (page 11, lines 11 to 14).

4. *Novelty*

4.1 It is undisputed that D2 discloses a restrictive search operation in accordance with the preamble of claim 1. The respondent argues that it also describes a nonrestrictive sort operation since, in the words of D2, "the shows and times may be *sorted* by type, or by other criteria" (emphasis added). The appellant however



denies that it discloses sorting of information on the screen, arguing that the passage is ambiguous and might simply refer to the selection, rather than ordering, of information.

4.2 In the Board's view this latter interpretation can indeed not be excluded. In the patent-in-suit the word "sorting" refers to ordering but in the context of D2 it is conceivable that "sorted" is merely used to indicate the grouping of programs according to "type" and "subtype". Thus, it is not certain that in D2 the programs corresponding to a selected type are *displayed* in an order chosen by the viewer but could be in an arbitrary or predetermined order, eg by channel (known from D8, Figure 1). There is no drawing which might resolve this ambiguity. Therefore, the invention of claim 1 is regarded as new (Article 54 EPC).

5. *Inventive step*

5.1 D2 permits a viewer to display information relating, for example, to all sports programs, including basketball, baseball and hockey, but not in a selectable order. This arrangement might be satisfactory to some viewers but unsatisfactory to others. For example, a baseball fan would probably find it cumbersome to have to search for baseball transmissions among the basketball and hockey programs even if he happened to be enough interested also in these games to want them to be displayed. As suggested by the appellant, the *technical problem* can therefore be seen as giving a viewer the option of choosing the way entries can be sorted.

- 5.2 The *solution* to this problem is according to claim 1 to provide nonrestrictive program sort attributes among which the viewer may choose, the attributes being transmitted by the service provider (ie being received from the outside).
- 5.3 The respondent has argued that the system in D2 already comprises suitable sorting attributes, namely the type and subtype identifiers (figure 2). The Board agrees it does. The identifiers are received from the service provider and serve to categorize the programs into theme groups. The only thing D2 does not disclose is that items of a certain type (eg sport) can, at the viewer's choice, be displayed in subtype order (eg baseball, followed by basketball and hockey). But this feature follows directly from the problem posed since it is a program ordering some viewers, depending on their personal tastes, can be expected to prefer. Thus, the skilled person merely had to use the identifiers for presenting the program information on the screen in an ordered manner. No inventiveness was needed to use the identifiers for this purpose since their sole function is exactly to characterise the contents of the programs and allow them to be "sorted" according to type (cf point 4.2 above). Moreover, the ordering should be at the choice of the viewer since some viewers may prefer other kinds of ordering, eg by channel. Again, this is a matter of personal taste, something which can be ascertained by asking viewers about their preferences and which the technically skilled person has to accept as a given fact when designing a program guide system.

- 5.4 Thus, the invention does not involve an inventive step (Article 56 EPC).

*The appellant's first auxiliary request*

6. According to claim 1 of the first auxiliary request, the nonrestrictive program sort attribute is chosen in response to performing the restrictive search operation. The appellant has explained that this added feature sets the condition on the system that the sort attributes are selectable (only) after the restrictive search is completed. This is because the availability of a sort attribute depends on the kind of search performed. For example, only after sports programs have been selected is the option to sort according to different kinds of sport activated.
7. In D2 the situation is not different since certain types are associated with certain subtypes. In any case, as the respondent has pointed out, it is a matter of common sense that the subtype "basketball" should be available after selection of the type "sports" but not after selection of, say, "movies". Thus, also the invention according to the first auxiliary request does not involve an inventive step (Article 56 EPC).

*The appellant's second auxiliary request*

8. In claim 1 according to the appellant's second auxiliary request a distinction is made between a *first* attribute associated with every program listing and a *second* attribute associated with a smaller subset of listings. The appellant has explained that the first attribute may for example be the channel number (every

program has a channel number) and the second attribute may for example indicate "sports" (not all programs are sport programs). Both attributes are nonrestrictive program sort attributes, which means that they may serve to determine the order of the information on the display, and are received from the service provider (from the outside).

9. The appellant argues that D2 only discloses an ever narrowing degree of restriction but no sorting of information on the screen. The respondent argues that D2 discloses the transmission of information suitable for serving as first and second attributes and that it would have been obvious to use them to sort information on the screen.
  
10. D2 (see figure 2) discloses identifiers applicable to all programs (eg the service numbers) or to some programs (the types and subtypes). Thus, they correspond to the first and second attributes in claim 1. All identifiers serve to identify or characterise the programs in some way. Therefore, the skilled person *could* have used them for ordering the programs on the screen. Moreover, he *would* have done so since the program sorting was included in the technical problem. Thus, the invention according to the second auxiliary request is regarded as not involving an inventive step for basically the same reasons as the main and first auxiliary requests (Article 56 EPC).

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

M. Kiehl

S. Steinbrener