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D E C I S I O N
of 29 November 2005

Case Number: T 1172/02 - 3.5.01

Application Number: 98935520.1

Publication Number: 0997037

IPC: H04N 5/44

Language of the proceedings: EN

Title of invention:

A system for forming and processing program specific information suitable for terrestrial, cable or satellite broadcast

Applicant:

THOMSON CONSUMER ELECTRONICS, INC.

Opponent:

-

Headword:

Program specific information/THOMSON CONSUMER ELECTRONICS

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step (no) "

"Technical problem - commercial framework"

Decisions cited:

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Catchword:

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Case Number: T 1172/02 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 29 November 2005

Appellant: THOMSON CONSUMER ELECTRONICS, INC.
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Representative: Kohrs, Martin
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 10 July 2002
refusing European application No. 98935520.1
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Steinbrener
Members: R. Wibergh
A. Pignatelli

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 98935520.1.
- II. The examining division held that the invention as defined in claim 1 in the version before them was not new with respect to
- D3: US-A-5 594 492.
- III. With the statement of grounds of appeal dated 18 November 2002, the appellant requested that the decision be set aside and a patent be granted based on an amended set of claims 1-16 filed together with the grounds of appeal.
- IV. Claim 1 of this set of claims reads:
- "Apparatus for decoding packetized program information to provide data content of a program, comprising:
means for identifying channel map information in said packetized program information, characterised in that said channel map information includes,
(a) a first identification number for use in identifying a broadcast source broadcasting a group of services, and
(b) a second identification number for use in identifying a first service from among said group of services associated with said first identification number and said first broadcast source; and
means for assembling said identified channel map information to form a channel map for use in

- identifying data using said first and second identification numbers in conjunction, said identified data constituting a program transmitted on said first service."
- V. In a communication from the Board it was pointed out that it might be difficult to make a distinction between two identification numbers, as claimed, and a single number comprising more than one digit, as known from D3. Furthermore, the invention relied heavily on the meaning of the first identification number, namely that it represented a certain broadcaster. This was hardly a technical feature.
- VI. By letter dated 8 November 2005, the appellant filed claims 1 to 15 according to an auxiliary request. The previous set of claims was maintained as main request. Claim 1 of the auxiliary request differed from the main request by the addition of a final feature:
- "means for selecting said first service (60) using said formed channel map in response to user entry (69,70) of said first identification number and to user entry of said second identification number."
- VII. Oral proceedings were held on 29 November 2005. The appellant argued that the invention allowed a viewer to remember program numbers more easily. The technical means for achieving this were the division of the service identifier into two numbers and the receiver's capability for reacting to them. Certainly there were also commercial reasons for the claim features, but that was true for any invention.

VIII. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 16 filed with letter of 18 November 2002 (main request) or alternatively on the basis of claims 1 to 15 filed with letter of 8 November 2005 (auxiliary request).

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

Reasons for the Decision

The main request

1. *Novelty*

The invention is related to digital video broadcasts in accordance with the MPEG-2 standard. A "service" (a "TV channel" in everyday language) is normally identified by a (binary) number which has to be entered in order to select the service. The invention according to claim 1 instead uses two numbers as service identifiers, namely a "first identification number" identifying a group of services from a common broadcast source and a "second identification number" identifying a particular service within that group.

The feature that a service is identified by two numbers rather than a single one renders the invention new with respect to the apparatus disclosed in D3 (fig. 4 and associated text) and the MPEG-2 standard, incorporated by reference and extensively referred to in that document (figs. 1,5) (Article 54 EPC).

2. *Inventive step*

2.1 It is explained in the description (p. 1,2) that the bandwidth previously allocated to a single analog broadcast channel may be split into a number of digital sub-channels offering a variety of services. Channel numbering in such a digital video system may present a problem because a broadcaster may not want to lose an original analog broadcast channel number even though the broadcaster is transmitting several services in the frequency spectrum previously occupied by the analog program channel. The broadcaster may have a significant investment in the channel number as a brand identity, eg Fox 5™ or Channel 13™. The invention permits the original channel number to be maintained in the form of a first identification number. A second identification number provides the necessary differentiation between the sub-channels.

2.2 It is first necessary to identify the technical problem solved by the invention as defined in claim 1. The disadvantage of having to sacrifice a well known channel number or brand identity is, in the Board's view, of a purely commercial nature. There is thus no technical merit in the insight, however inspired in itself, that a service provider might want to retain its well-known analog channel number for its digital services. By the same token, the wish that services belonging to the same broadcaster should be recognisable as such is also of a non-technical character.

- 2.3 Generally, it is only after the commercial framework of an invention has been defined that a technically skilled person is consulted to propose the means for achieving the desired result. In most cases this framework is of a trivial nature (profit making, for example) and not even mentioned in the application. If, however, claim features can only be properly understood in the light of commercial interests, care must be taken not to confuse the technical problem with mere non-technical goals. In the present case, the person skilled in the art of digital broadcasting would have nothing to do with the decision whether to use an old channel number for the digital service. He would only be called upon to find a way of defining a service identification whose format was suitable for conveying the desired information. This was the technical problem to be solved.
- 2.4 Clearly two items of information, such as numbers, could be coded in various more or less sophisticated ways, but the most straight-forward solution is no doubt simply to represent them by two separate numbers (bit patterns). Claim 1 requires nothing more. Thus, the subject-matter of claim 1 lacks an inventive step (Article 56 EPC).
- 2.5 The appellant has pointed out that the invention allows a viewer to remember program numbers more easily and that the means for achieving this are technical, namely the division of the service identifier into two numbers and the receiver's capability for reacting to them. This is not denied. It appears however that the technical contribution to the art resides solely in the structure of the service identifier numbers, whereas

any advantages for the viewer stem from the *meaning* attributed to them. The claimed decoding apparatus does not work differently because of this meaning. Its job is merely to associate two numbers, easy to remember or not, with a certain broadcast service.

The auxiliary request

3. According to the auxiliary request the apparatus comprises means for selecting a service using the formed channel map in response to user entry of the first and second identification numbers. This feature can however be regarded as implicit in claim 1 according to the main request since no decoding apparatus can operate unless a service has been selected. Thus, this request is not allowable either (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Guidi

S. Steinbrener