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**Datasheet for the decision
of 9 May 2007**

Case Number: T 0407/04 - 3.5.04

Application Number: 95107039.0

Publication Number: 0682452

IPC: H04N 7/088

Language of the proceedings: EN

Title of invention:

Method and system for providing efficient selection of television programs

Patentee:

MICROSOFT CORPORATION

Opponent:

IGR GmbH & Co. KG.

Headword:

-

Relevant legal provisions:

EPC Art. 56, 114(2)

RPBA Art. 10a(4)

Keyword:

"Late submitted material - document admitted (yes)"

"Inventive step - (yes) after amendment."

Decisions cited:

-

Catchword:

-



Case Number: T 0407/04 - 3.5.04

DECISION
of the Technical Board of Appeal 3.5.04
of 9 May 2007

Appellant: IGR GmbH & Co. KG.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
17 February 2004 concerning maintenance of the
European Patent No. 0682452 in amended form.

Composition of the Board:

Chairman: F. Edlinger
Members: A. Teale
B. Müller

Summary of Facts and Submissions

I. The appeal is against the interlocutory decision by the opposition division that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, the patent and the invention to which it related met the requirements of the EPC. The opposition had been based on Article 100a EPC (Articles 52 to 57 EPC), in particular novelty and inventive step.

II. The appealed decision refers to the following documents, amongst others:

D1: DE 42 40 187 A1
D4: EP 0 488 379 A2
D6: DE 35 27 939 A1
D7: DE 42 01 031 C2.

III. The opponent appealed and additionally referred to the following documents in the statement of grounds of appeal:

D11: V. Brugliera, "Digital on-screen display. A new technology for the consumer interface", Cable TV sessions, symposium 18, 10 to 15 June 1993, Montreux (CH), pages 571 to 586.

D12: US 4 706 121 A.

IV. In a letter dated 29 January 2007 the appellant submitted a change of name and filed a copy of the corresponding extract from the German commercial register.

V. In an annex to a summons to oral proceedings the board pointed out that the publication dates of D1 and D7 were both after the priority date of the opposed patent.

VI. In a further submission the appellant requested that the following document:

D7': DE 42 01 031 A1

be admitted into the proceedings. D7' was the prior published patent application corresponding to the patent specification D7. The appellant argued that, since the content of D7' was essentially the same as that of D7, D7' could be understood with little additional effort.

VII. Oral proceedings were held on 9 May 2007, during which the board admitted D7', D11 and D12 into the proceedings. The respondent filed an amended set of claims 1 to 3 and requested that the patent be maintained with claims 1 to 3 filed in the oral proceedings and a description to be adapted. The appellant requested that the decision under appeal be set aside and the patent revoked.

VIII. Claims 1 and 3 read as follows (additions with respect to granted independent claim 21 being indicated in **bold**, deletions being ~~struck through~~).

Claim 1:

"A computer system for selecting and displaying a television program from among a plurality of television programs, comprising:

a display device (130);

an input device (120) through which the selected television program is selected by a user; and

a computer (100) coupled to the display device (130) and to the input device (120), comprising:

an input unit (160) for obtaining the selected television program from the input device (120),

a memory (300) for storing a program name and a time of broadcast of each of the plurality of television programs, and

a processor (170) for obtaining the selected television program from the input unit (160) for reading the program name and time of broadcast for each of the plurality of television programs from the memory (300), for displaying on the display device (130) the read program names and times of broadcast, and when the selected television programs is currently being broadcast, for displaying in a separate window (240) the selected television program concurrently with the program name and time of broadcast of the plurality of television programs so that the selected television program does not overlay the displayed program names and broadcast times."

Claim 3:

"A method in a computer system for displaying television information about a plurality of television programs on a display device (130), the method comprising the steps of:

receiving the television information for each of a plurality of television programs, the television information including a name and a time of broadcast;

for each of the plurality of television programs, displaying on a display device (130) the name of the television program and an indication of the time of broadcast of the television program; receiving from a user of the computer system a selection of one of the plurality of television programs; and in response to receiving the selection and when the selected television program is currently being broadcast, displaying the broadcast of the selected television program in a separate window (240) simultaneously with the displayed names and indications of the time of broadcast of the television programs in that the selected television program displayed in the separate window does not overlay displayed names and indications of the time of broadcast of the television programs."

Claim 2 is dependent on claim 1.

IX. The appellant's arguments may be summarized as follows. D11 had not been intentionally kept in reserve and not cited in opposition proceedings. According to established case law of the boards of appeal, a

document stated to be the closest prior art in the description of a patent could always be admitted into appeal proceedings. Its admittance depended largely on its relevance. D11 mentioned picture-in-picture displays being used for program selection; see page 577, last paragraph. Pages 577 and 583 (last paragraph) mentioned simultaneously displaying a program list from which the user could select and a program description. Pressing the "INFO" button on a remote control enabled the user to display, and to return from, the extended program description to the program list; see the passage on page 584 entitled "Info". D11 did not however indicate whether the program description was overlaid on the program list or displayed as a "picture-in-picture". The subject-matter of claims 1 and 3 lacked inventive step in view of the combination of D11 with D6 (see column 5, lines 48 to 54) and common technical knowledge. The objective problem was seen as improving the readability of text, figure 4d of D6 showing a program list superimposed on a live TV picture, the obvious solution lying in not overlaying the text on the TV picture. The subject-matter of claims 1 and 3 also lacked inventive step in view of the combination of D11 with D4 and common technical knowledge. D4 disclosed the simultaneous display of a program list and a live TV picture; see figures 3a to 3c. It was obvious from figures 3a and 3b that the TV picture and the program list could best be viewed if they were not overlaid.

- X. The respondent's arguments may be summarized as follows. D11 and D12 should be considered as late submissions and should not be admitted into the proceedings. The respondent had a right to expect any relevant prior art

to be found during opposition proceedings. Although D11 had been regarded as a key document during examination proceedings, the opponent had chosen not to rely on it in opposition proceedings, there being no suggestion of a mistake having been made during opposition proceedings. The admittance of new documents was not justified by amendments. The appellant was merely seeking to "reload" and bring new prior art into the proceedings. It was thus now too late for the appellant to raise D11 again in appeal proceedings, since this would deny the respondent the possibility of two legal instances deciding on D11. Furthermore the appellant seemed to be combining two different embodiments in D11: that on page 577 and that on page 583. The "barker channels" mentioned on page 577 were also not interactive and were merely described as on-screen-displays which were already available. In D11 pressing the "INFO" button caused a program description to be displayed in a new display window and not a TV picture, as set out in the claims. The claimed subject-matter was consequently inventive in view of D11, D4 and D6. D4 and D6 did not mention navigating around a program list and displaying a TV picture. In D6 the list was Teletext and thus could not be selected. In D4 the window in figure 3a only related to one program, rather than a list, and no program selection was possible. Moreover D4 did not display a program list, but rather a "timer recording reservation window".

XI. At the end of the oral proceedings the board announced its decision.

Reasons for the Decision

1. The appeal is admissible.

2. The amendments

Minor editorial amendments aside, claims 1 to 3 are the same as granted claims 21 to 23, granted independent claims 1 and 20 having been deleted. The board is satisfied that the amendments comply with Article 123(2,3) EPC.

3. Admittance of D11, D7' and D12 into the proceedings

3.1 The statutory framework

Under Article 114(2) EPC the EPO has a discretion to disregard facts or evidence which are not submitted in due time by the parties concerned. In the light of Article 111(1) EPC, 2nd sentence, the admittance of a new document into appeal proceedings need not necessarily result in the case being remitted to the first instance. According to Article 10a(4) RPBA, without prejudice to the power of the board to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings, everything presented by the parties in the notice and statement of grounds of appeal shall be taken into account by the board if and to the extent it relates to the case under appeal and meets the requirements of Article 10a(2) RPBA.

3.2 D11

It is not contested that the appellant set out his complete case relating to D11 with the statement of grounds of appeal and that D11 relates to the case under appeal within the meaning of Article 10a(4) RPBA, the respondent not having contested the relevance of D11 to the present case. Moreover D11 was discussed (as D2) before the examining division and mentioned in paragraph [0008] of the description of the published patent specification (albeit referring to the author as "D Brugliera" rather than "V. Brugliera"). There is no evidence that the appellant deliberately kept D11 "in reserve" for appeal proceedings, indeed the appellant has expressly denied this. The board is satisfied that not citing D11 before the first instance was not a matter of tactics by the appellant amounting to procedural abuse. In these circumstances the board, in exercising its discretion to hold inadmissible facts and evidence the presentation of which otherwise complied with all the requirements of Article 10a(2) and (4) RPBA, saw no reason to exclude D11 and consequently admitted D11 into the proceedings.

3.3 D7' and D12

Although the appellant relied on D7' and D12 during written appeal proceedings and the beginning of the oral proceedings, the appellant no longer relied on these documents in relation to the claims filed by the respondent in the oral proceedings (reproduced at point VIII above). The board's reasons for admitting D7' and D12 into the proceedings thus cease to be material to a decision in the present case.

4. The prior art

4.1 Document D11

D11 concerns a system for enhancing cable television services by adding viewer guide information such as program guides to the cable television signal, a set-top terminal decoding the cable TV signal and the program guide information for display on the user's television. The program guide is presented as a table, as shown in figure 6, with a row per channel and a column for each successive time slot; see the paragraph bridging pages 582 and 583. The user controls the set-top terminal using a remote control, shown in figure 7, and can tune to a particular channel by using the remote control to highlight the channel and pressing the "ENTER" button; see page 583, penultimate paragraph. For certain guide services the user can press the "INFO" key on the remote control and cause a brief program description to be displayed; see page 583, last paragraph. According to the paragraph entitled "Info" on page 584, pressing the "INFO" button again returns the guide. There is no indication in D11 as to how the program guide and the brief program description are displayed. D11 also mentions a prior art approach to providing program guides, namely having a dedicated non-interactive TV channel with a scrolling TV program guide, termed a "barker channel". Such barker channels often have a "picture-in-picture" presentation of future programs; see page 577, last paragraph.

4.2 Document D6

D6 concerns a Teletext-based system for displaying, for one or more channels, the title and start time of the program currently being broadcast and the following program, as shown in figure 4d. This display is overlaid on the currently received TV picture; see column 5, lines 48 to 54. There is no mention of obtaining a user selection or non-overlaid display of the current TV program in a separate window.

4.3 Document D4

D4 concerns a system to ease the programming of a VCR (video cassette recorder) to record programs. The system extracts data from a broadcast signal and displays a program table on the screen of the user's television. The user then selects one of the displayed programs using a remote control, shown in figure 1c, in order to reserve it for recording on the VCR. Figure 3a shows the "Timer recording reservation" window W1, which contains the details of the program to be recorded (entered using the remote control), overlaid on the TV picture in a case where no data are provided on the corresponding channel; see column 7, lines 28 to 58. A user can also select a TV program for recording from a program list displayed on the screen, as shown in figures 3b and 3c; see column 8, lines 1 to 28. There is no mention of non-overlaid display of the current TV program in a separate window.

5. The patentability of the claimed subject-matter

5.1 Novelty

D11 forms the closest prior art. The subject-matter of apparatus claim 1 and method claim 3 differs from the disclosure of D11 essentially in that when the selected television program is currently being broadcast, the processor displays the selected television program in a separate window concurrently with the program name and time of broadcast of the plurality of television programs so that the selected television program does not overlay the displayed program names and broadcast times. The claimed subject-matter is consequently new, Article 54(1,2) EPC.

5.2 The objective technical problem

The board finds that the technical problem proposed by the appellant, namely improving the readability of the text in D11, cannot be regarded as the objective technical problem for the purposes of assessing inventive step because it is not necessarily solved by the above difference features. Adding a separate non-overlaid window showing the program currently being broadcast would not necessarily improve the legibility of the program guide shown in figure 6 of D11. On the contrary, by occupying some of the screen area, the additional window would take up space previously available for the program guide and thus necessitate shrinking the program guide, thereby reducing its legibility. Instead the board regards the objective technical problem as being to ease program selection, as is derivable from paragraph [0009] of the published

patent. This problem is usual in the technical field to which the invention relates.

5.3 D11 combined with D6 and general technical knowledge

The skilled person, starting from D11 and seeking to solve the objective technical problem, would not have found a useful hint in D6 because D6 merely discloses, as shown in figure 4d, overlaying the program guide on the current (previously selected) television program, as is usual with Teletext presentation. Hence D6 does not even suggest overlaying a selected television program, when the selected television program is currently being broadcast, concurrently (or simultaneously; see claims 1 and 3) with the program name and time of broadcast of the plurality of television programs, let alone displaying the TV picture in a separate window not overlaying the program guide. These features are not known from any document on file, nor are they regarded by the board as matters of general technical knowledge at the priority date of the opposed patent.

The board consequently finds that the subject-matter of claims 1 and 3 involves an inventive step, Article 56 EPC, in view of the combination of D11 with D6 and general technical knowledge.

5.4 D11 combined with D4 and general technical knowledge

The skilled person, seeking to solve the above objective technical problem, and applying the teaching of D4 to the system and method known from D11 might, as shown in figures 3a to 3c, have displayed a program

guide as disclosed in D11 and the description of the selected television program in a separate window. The window, like W1 in figure 3a of D4, could be overlaid on the currently displayed television program when no data are provided on the corresponding channel. However D4 does not hint at displaying a selected television program, when the selected television program is currently being broadcast, concurrently (or simultaneously; see claims 1 and 3) with the program name and time of broadcast of the plurality of television programs in a non-overlaid separate window. Again, these features are not known from any document on file, nor are they regarded by the board as matters of general technical knowledge.

The board consequently finds that the subject-matter of claims 1 and 3 involves an inventive step, Article 56 EPC, in view of the combination of D11 with D4 and general technical knowledge.

5.5 Conclusion

The board concludes that the subject-matter of claims 1 and 3 and that of claim 2, which has all the features of claim 1, involves an inventive step, Article 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to maintain the patent with claims 1 to 3 received during the oral proceedings of 9 May 2007 and a description to be adapted.

The Registrar:

The Chairman:

D. Sauter

F. Edlinger