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**Datasheet for the decision
of 29 January 2007**

Case Number: T 1044/04 - 3.5.04

Application Number: 99968862.5

Publication Number: 1135929

IPC: H04N 5/445

Language of the proceedings: EN

Title of invention:

Electronic program guide with related-program search feature

Patentee:

United Video Properties, Inc.

Opponent:

IGR GmbH & Co. KG.

Headword:

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Relevant legal provisions:

EPC Art. 54, 56, 102(3), 114(2)
RPBA 10a(4)

Keyword:

"Novelty (no) (Main and first auxiliary request)"
"Inventive step (yes) (second auxiliary request)"

Decisions cited:

T 0633/97, T 1002/92

Catchword:

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Case Number: T 1044/04 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 29 January 2007

Appellant: IGR GmbH & Co. KG.
(Opponent) Bahnstraße 62
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Representative: Eichstädt, Alfred
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Respondent: United Video Properties, Inc.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 2 July 2004
rejecting the opposition filed against European
patent No. 1135929 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: F. Edlinger
Members: C. Kunzelmann
T. Karamanli

Summary of Facts and Submissions

I. The appeal is against the decision of the opposition division rejecting the opposition against European patent No. 1 135 929.

II. Claims 1 and 8 of the patent as granted read as follows:

Claim 1:

"A method for use in an interactive television program guide system having user television equipment and a remote control for interfacing with said user television equipment, wherein a display screen is provided for presenting a video for a given program, comprising:

displaying a display screen including the program listings located by the system; characterised in that the method comprises searching for programs; and in that the method further comprises:

allowing the user to use a single key on a remote control (72) while the video for the given program is being displayed to direct the program guide system to locate program listings related to the given program."

Claim 8:

"An interactive television program guide system comprising:

a remote control that is configured to interface with user television equipment;

user television equipment on which an interactive television program guide is at least partially implemented, wherein the user television equipment is

configured to display a display screen that includes a video for a given program, and to display a display screen that includes program listings located by the system;

characterised in that the system is arranged to search for programs; and in that the user television equipment is configured to allow the user to use a single key on a remote control while the video for the given program is being displayed to direct the program guide system to locate the program listings related to the given program."

III. The decision under appeal referred in detail to the following documents:

D1: DE 36 40 436 C2 and

D2: DE 42 40 187 A1.

IV. The reasons in the decision under appeal can be summarized as follows:

Grounds for opposition were lack of novelty having regard to document D1 and lack of inventive step having regard to documents D1 to D5, in particular to a combination of D1 and D2.

None of the documents relied upon in the notice of opposition disclosed the concept of launching, by pressing a single remote control button, a search for program listings related to a currently viewed video of a given program. In the invention searching implied technical steps of analysing and comparing for example program attribute values. None of these steps were

implied in the Electronic Program Guide (EPG) system of D1.

A similar reasoning applied to D2. In figure 2 of D2 the results of a search among program listings was displayed where the search criterion was predetermined to be the random moment in time at which a single button was pressed. The displayed list of programs could be said to be related to the presently viewed program in so much as they were all transmitted by their respective broadcasters at the same moment in time. However, it would be unfair to interpret D2 so that a randomly selected moment in time presented a relating attribute to any group of programs. The result of a search according to a content theme (D2, figure 5) was not necessarily a shared theme with a presently viewed video in the sense implied by the claims of the patent in suit. Nor did the displayed listing result from the simple pressing of a single button because further viewer inputs via the remote control were necessary in D2. A combination of figure 5 of D2 with D1 appeared to be based upon hindsight.

V. The appellant (opponent) filed an appeal against this decision and submitted a new document

D6: EP 0 774 866 A2

with the statement of grounds of appeal. In a letter of 26 October 2006 the appellant informed the board of a change of its name and filed a copy of the corresponding excerpt from the German commercial register.

VI. In reply to the summons to oral proceedings the respondent (patentee) filed three sets of claims according to auxiliary requests 1, 2 and 3 with a letter dated 29 December 2006.

VII. Claims 1 and 9 of the second auxiliary request read as follows:

Claim 1:

"A method for use in an interactive television program guide system having user television equipment and a remote control for interfacing with said user television equipment, comprising:
displaying a display screen that includes a video for a given program;
allowing the user to use a remote control while the video for the given program is being displayed to direct the program guide system to display a display screen containing a plurality of program attributes for the given program;
characterised in that the method comprises searching for a program; the method further comprising allowing the user to use a single key on a remote control to direct the program guide system;
providing the user with an opportunity to assign various importance levels to the program attributes on the display screen; and
displaying a selectable search option on the same display screen as the program attributes and assigned importance levels that the user selects to direct the program guide system to locate program listings related to the given program based on the program attributes and their assigned importance levels."

Claim 9:

"An interactive television program guide system, comprising:
a remote control that is configured to interface with user television equipment; and
user television equipment on which an interactive television program guide is at least partially implemented, wherein the user television equipment is configured to display a display screen that includes a video for a given program, to allow the user to use a remote control while the video for the given program is being displayed to direct the program guide system to display a display screen containing a plurality of program attributes for the given program, characterised in that the system is arranged to search for programs; the user television equipment being further configured to allow the user to use a single key on a remote control to direct the program guide system, to provide the user with an opportunity to assign various importance levels to the program attributes on the display screen, and to display a selectable search option on the same display screen as the program attributes and assigned importance levels that the user selects to direct the program guide system to locate program listings related to the given program based on the program attributes and their assigned importance levels."

Claims 2 to 8 are dependent on claim 1 and claims 10 to 16 are dependent on claim 9.

- VIII. Oral proceedings took place on 29 January 2007. The respondent did not attend the oral proceedings, as already announced in a letter dated 10 January 2007.
- IX. The appellant requested that the decision be set aside and the European patent No. 1 135 929 be revoked in its entirety.
- X. The respondent requested (in writing) that the appeal be dismissed and the patent upheld as granted (main request), or that the patent be maintained in amended form on the basis of the auxiliary requests 1, 2 or 3 filed with letter dated 29 December 2006.
- XI. The appellant argued essentially as follows:

Both D1 and D2 anticipated the method of claim 1 of both the main request and the first auxiliary request because claim 1 was very broadly formulated. It neither indicated when, why, or how programs were searched, nor criteria determining whether a program was related to the given program. Also the description referred to different attributes for determining such a relationship only as one possibility. D2 disclosed that the viewer of a given television program could direct the program guide system to locate videotext pages with program tables for several channels (figure 2) by pressing a single key, leading to the displaying of a combined videotext page indicating the programs broadcast at the same time as the given program. The filtering of the videotext pages with the program tables from the videotext data stream and the selection of the programs being broadcast when the key was pressed constituted a search for programs.

The method of claim 1 of the second auxiliary request did not involve an inventive step having regard to document D2 alone or in combination with D6. In D2 a search was performed, a single key could be used to display the menu screen of figure 5 with attributes such as date, theme etc. The user could choose to give an attribute zero priority by not using it, or enter one of the possible attribute values such as those mentioned in claim 4 (news, sports, etc.). The subject-matter of claim 1 only differed from the disclosure of D2 in that a selectable search option was also displayed and the program attributes were those for the given program. The former feature was a discretionary measure for a person skilled in the art. Concerning the latter feature, it constituted an obvious improvement over displaying empty fields to automatically insert the attribute values of the current program into the menu of figure 5 in D2 and give the user the opportunity to edit them. D6 was submitted because it explicitly disclosed the display of program attributes for the currently viewed program by activating a single key. This feature, as illustrated for instance in figures 1, 2, and 6 of D6, was thus also obvious from D2 in combination with D6.

XII. The respondent argued essentially as follows:

In the present invention a single key was automatically responded to by the interactive television program guide to search program listings based on what the program being displayed actually was. The interactivity of the claimed guide was part of the functionality of the invention.

D1 did not disclose an interactive television program guide. It disclosed calling up existing teletext pages of channel specific guide information, which could not be embraced by the concept of searching for programs to locate those related to the program being displayed.

D2 did not disclose the basic idea of embarking on a search based on the use of a single key. Instead it disclosed calling up teletext pages containing all of the offerings for other channels and the use of an additional key to display all programs currently being broadcast. This was an on-screen version of the television listings found in television listings magazines. This involved preordination and merely allowed the user to define a restriction according to the current time. If one were to activate the single key at a given time the result would be the same no matter which channel it was tuned to. The displayed program would have no bearing on the contents of the page. Thus the method of claim 1 as granted (main request and first auxiliary request) was new.

In addition to the differences set out above, D2 did not suggest displaying a plurality of program attributes for the program that was being displayed, nor the opportunity for a user to assign various importance levels to attributes for a displayed program.

D6 should not be admitted into the proceedings because it was filed in appeal proceedings and was only of peripheral relevance. Like D2, D6 neither disclosed embarking on a search based on the use of a single key, nor displaying of a plurality of attributes, of

assigned importance levels, and of a selectable search option. In particular, D6 did not disclose using the program currently displayed to establish the search criteria automatically as soon as the single key on the remote control was activated. Also the combination of D2 and D6 failed to make the link between the currently displayed program and the setting up of search criteria.

Reasons for the Decision

1. The appeal is admissible. With regard to the identity of the appellant, it is clear from the excerpt from the German commercial register that the appellant changed its name, whereby its status as a party remains unchanged.

2. *Late filed document D6*

Document D6 was submitted and referred to by the appellant for the first time with the statement of grounds of appeal, that is after the nine-month opposition period laid down in Article 99(1) EPC. In the absence of exceptional circumstances justifying its submission at this stage of the proceedings, it is late-filed (see Case Law of the Boards of Appeal, fourth edition 2001, VI.F.1). Therefore, it lies within the board's power to exercise its discretion under Article 114(2) EPC to disregard D6. As regards proceedings before the boards of appeal, late-filed documents in support of grounds of opposition should only very exceptionally be admitted into the proceedings (T 1002/92, OJ EPO 1995,605).

D6 discloses locating program listings which satisfy viewer preferences. To this end, D6 takes account of categories of programs having been watched for a given period of time (D6, column 2, lines 26 to 52), and thus also of that of the currently viewed program. Thus it provides a more complete picture on how program listings or attributes for searches were "related to the given program" in the prior art. In addition, D6 is a relatively short document which does not raise further complex substantive questions with regard to technical or legal issues complicating the appeal proceedings (see T 633/97). Thus the board, when exercising its power referred to in Article 10a(4) of the Rules of Procedure of the Boards of Appeal (RPBA), OJ EPO 2003, 89, decided to admit the late-filed document D6 into the appeal proceedings.

3. *Claim 1 of the main request and the first auxiliary request:*

Novelty (Article 54 EPC)

3.1 Claims 1 to 14 of both requests are a copy of claims 1 to 14 of the patent specification. Claims 15 to 30 as granted have been deleted in the first auxiliary request.

3.2 D2 discloses in its embodiment of figure 2 a method for use in an interactive television program guide system having user television equipment and a remote control for interfacing with said user television equipment (column 5, lines 14 to 21), wherein a display screen (B) is provided for presenting a video for a given program (figure 1; column 4, lines 21 to 26). The method comprises displaying a display screen including the

program listings located by the system (column 5, lines 7 to 13), and a step of searching for programs ("fragt die übrigen empfangbaren Sender nach deren Videotextinformationen ab", see column 4, lines 27 to 46). The method also allows the user to use a single key ("zusätzliche Taste") on a remote control while the video for the given program is being displayed to direct the program guide system to locate program listings related to the given program (column 5, lines 14 to 21 in conjunction with column 4, lines 21 to 26). Thus D2 discloses a method having all the features specified in claim 1.

- 3.3 The argument that D2 does not perform a search is not convincing. The videotext data in D2 comprise different tables of different television channels. Some of the videotext tables contain program tables (D2, column 1, lines 16 to 22) and are used for composing the time-dependent table displayed on the display screen as illustrated in figure 2 (D2, column 4, lines 36 to 46). The retrieval of the entries of the currently available programs in the program tables from the stream of videotext data constitutes a search for programs. Moreover, claim 1 does not exclude that searching for programs is carried out in the background and that the user activating the single key directs the system "to locate program listings" and to display "the program listings located by the system". Claim 1 does not specify an explicit relationship between the locating of program listings and the searching for programs.

The argument that the programs displayed in figure 2 are not related to the given program is not convincing either. Claim 1 does not specify the kind of

relationship; in particular it does not specify that the relationship is based on the content of the program (e.g. a particular category or attribute) being displayed. Also the description of the opposed patent (column 7, lines 7 to 14) uses very different parameters, such as scheduled program duration or program channel etc., as possible examples for specifying a relationship. In the judgement of the board the located program listings in figure 2 of D2 are related to the given program (namely the program whose video was being displayed when the screen of figure 2 was called up) in that the contents of the displayed listings depend on the time when the screen of figure 2 is called up. They are also related to the channel watched in that they are also channels available via aerial 1 illustrated in figure 1. The expression "related to the given program" of claim 1 does not exclude that the listings may have the same contents when the user watching one of the other available programs activates the single key.

3.4 In view of the above the board judges that the method of claim 1 of the main request and the first auxiliary request forms part of the state of the art and thus is not new.

4. *Second auxiliary request:*
Inventive step (Article 56 EPC)

4.1 Claims 1 to 16 of the second auxiliary request correspond to claims 15 to 30 as granted. The amendments - only renumbering - do not infringe Article 123(2) and (3) EPC.

- 4.2 The novelty of the method of claim 1 of the second auxiliary request, namely claim 15 as granted, was not disputed in the opposition and appeal proceedings.
- 4.3 Claim 1 of the second auxiliary request specifies that a single key on a remote control may be used "to direct the program guide system". It is clear from the context of claim 1 that the direction given in this method step is "to display a display screen containing a plurality of program attributes for the given program" (see the precharacterising portion of claim 1), the "given program" being the one for which the video is being displayed. The user has the opportunity to assign various importance levels to the program attributes. Claim 1 also specifies that, when the program attributes are assigned, a display screen contains the plurality of program attributes for the given program, their assigned importance levels, and a selectable search option. The search option is one the user selects to direct the program guide to locate program listings related to the given program based on the (displayed) program attributes and their assigned importance levels.
- 4.4 Thus there is neither a need for navigating through several display screens before being allowed to initiate a search nor for having to enter at least a portion of a program title to initiate a search (see paragraph [0005] of the opposed patent) based on attributes for the program being viewed. Furthermore, locating of program listings based on the attributes with their user-configured levels of importance allows the user to define preferences when locating related

program listings (paragraphs [0043] and [0044] of the opposed patent).

4.5 The appellant relied on D2 and D6 in his argumentation as to lack of inventive step of claim 1 of the second auxiliary request. However neither D2 nor D6 discloses a display screen displaying a plurality of program attributes for the given program, their assigned importance levels, and a selectable search option.

4.5.1 In D2 the screen of figure 5 shows options ("Zeit", "Zeitfenster", "Datum", "Thema") which cannot be equated with the attributes specified in claim 1, since they are not attributes for the given program, but menu options for specifying parameters determining which program listings will be located and displayed next time when the single key is activated. A search can only be carried out on the parameters the user enters in the screen of figure 5, such as a specific theme or a specific time window (D2, column 5, lines 43 to 49 or claim 4). These parameters must correspond to predetermined values of the videotext data, and no importance levels can be assigned thereto. A selectable search option is not displayed on this screen.

The argument that D2 implies two importance levels as specified in claim 1 (such as "to be ignored" and "to be searched for") is not convincing, since the claim requires that the importance levels are displayed. If parameters entered by the user in these fields are considered as attributes on which a search is based, then empty fields have to be considered as (potentially) selectable parameters. They cannot be both the attributes and their assigned importance levels, these

both being displayed according to present claim 1 (see e.g. figure 7A of the opposed patent). While the display of figure 2 in D2 is related to the program in the meaning set out above, the display of figure 5 is a menu screen and there is no hint in D2 that the selectable fields might be displayed with parameters, corresponding to those of the given program from which the menu screen was activated by a menu key, and assigned importance levels (D2, column 5, lines 35 to 42). Rather an obvious modification would be to display in these fields the parameters last selected by the user. Except for the feature "searching for a program", D2 does not disclose any of the features of the characterising portion when read in the context of claim 1 of the second auxiliary request, and the board sees no obvious modification of D2 that would have led to the method set out in claim 1.

- 4.5.2 In D6 the user can call up the screen of figure 6b (D6, column 5, lines 47 to 54) displaying a list of suggested television programs that might be of interest. The interest is determined by the user's viewing habits in the past (D6, figure 5 and column 5, lines 28 to 39 in conjunction with figure 2 and column 2, lines 26 to 52), not from the given program (unless the screen is called up when the given program is the only one ever viewed). The user cannot assign importance levels to the suggested programs. A search option is not selectable on this screen as the screen is already the result of the search for interesting programs.

On the screen shown in figure 6c the user can delete programs/categories or exclude programs/categories from being deleted from the list of items viewed in the past

(column 5, line 54 to column 6, line 9). Also this list is essentially independent from the given program. No importance levels can be assigned to the programs/categories. A search option is not selectable.

The argument that importance levels assigned to the program attributes for the given program as specified in claim 1 are known from figures 1 or 2 of D6 is not convincing. Figure 1 shows that a film may have a rating, but this rating is neither assignable by the user nor does it form the basis of a search for programs. Figure 2 shows a "viewed item list" with counts of categories/programs viewed in the past. The current program may be included in the count of categories, but it is not (individually) identified in this list. Furthermore the argument that the options "lock item" and "delete item" in figure 6c of D6 can be equated with the importance levels of claim 1 is not convincing, since a deleted item would not be displayed.

4.5.3 Thus a combination of D2 and D6 does not suggest presenting to the user a screen displaying attributes for the given program, importance levels assigned to these attributes, and a selectable search option in the sense of claim 1 of the second auxiliary request. The same is true for the interactive television program guide system of claim 9 which comprises the functional apparatus features corresponding to the steps of claim 1.

4.5.4 The board is satisfied that none of the other documents in the opposition or appeal proceedings suggests the subject-matter of claims 1 and 9. The subject-matter of claims 1 and 9 and that of their dependent claims was

not obvious to a person skilled in the art and thus involves an inventive step.

5. In view of the above the board judges that claim 1 and claim 9 of the second auxiliary request define patentable subject-matter and that under Article 102(3) EPC the patent is to be maintained in amended form with these claims and a description to be adapted to the amended claims.

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 the following claims and a description to be adapted:

Claims 1 to 16 according to the second auxiliary request filed with letter of 29 December 2006.

The Registrar:

The Chairman:

D. Sauter

F. Edlinger