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Datasheet for the decision
of 21 March 2007

Case Number:	T 1278/04 - 3.5.01
Application Number:	96921600.1
Publication Number:	0880855
IPC:	H04N 7/088, H04N 7/16, H04N 1/00
Language of the proceedings:	EN

Title of invention:
Intelligent EPG memory management system and method

Patentee:
United Video Properties, Inc.

Opponent:
IGR GmbH & Co. KG.

Headword:
EPG memory management / UNITED VIDEO PROPERTIES

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-

Case Number: T 1278/04 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 21 March 2007

Appellant: (Opponent)		IGR GmbH & Co. KG. Bahnstrasse 62 D-40210 Düsseldorf (DE)
Representative:		Eichstädt, Alfred Maryniok & Eichstädt Kuhbergstrasse 23 D-96317 Kronach (DE)
Respondent: (Patent Proprietor)		United Video Properties, Inc. 7140 South Lewis Avenue Tulsa, OK 74136 (US)
Representative:		Hale, Peter Kilburn & Strode 20 Red Lion Street London WC1R4PJ (GB)
Decision under appeal:		**Decision of the Opposition Division of the European Patent Office posted 15 September 2004 rejecting the opposition filed against European patent No. 0880855 pursuant to Article 102(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I.   This appeal is against the decision of the opposition
       division to reject the opposition against European
       Patent No. 0 880 855.

II.   Claim 1 of the patent-in-suit as granted reads as
       follows:

       "1. A television electronic program guide (EPG) system,
       including means for receiving program schedule
       information including program names, scheduled air
       times and channels, means for storing the program
       schedule information, means for executing an EPG
       program, display means for displaying schedule
       information on-screen, and means for automatically
       deleting expired program schedule information from the
       storage means to create free space to accommodate
       storage of new program schedule information,
       characterized by:
       means for automatically deleting, as needed to create
       additional free space in the storage means for storage
       of new program schedule information, unexpired program
       schedule information according to a value of its
       current utility to a viewer."

       Independent claim 8 defines a corresponding method.

III.   The notice of appeal was received on 28 October 2004.
       The appellants (opponents) requested that the decision
       of the opposition division be set aside and the patent
       be revoked in its entirety. The appeal fee was paid on
       the same day. In the statement setting out the grounds

of appeal, received on 13 January 2005, the following prior art documents were *inter alia* cited:

D5: US-A-5 223 924
D6: US-A-5 047 867.

IV.   By letter dated 27 May 2005 the respondents requested that the appeal be dismissed.

V.   In a communication dated 10 July 2006 the Board discussed D5 and further referred to the following document quoted in the patent-in-suit (albeit with an incorrect number):

D3: WO-A-94/29811.

VI.   By letters dated 20 November 2006, 11 December 2006 and 31 January 2007, the respondents filed first to fifth auxiliary requests.

VII.   Oral proceedings were held on 21 March 2007.

The appellants requested that the decision under appeal be set aside and the patent be revoked.

The respondents requested that the appeal be dismissed and that the patent be maintained, or that the decision under appeal be set aside and the patent be maintained in amended form in accordance with either the first or second auxiliary requests submitted with letter dated 20 November 2006 or the third or fourth auxiliary requests submitted with letter dated 11 December 2006 or the fifth auxiliary request submitted with letter dated 31 January 2007.

At the end of the oral proceedings the Chairman
announced the Board's decision.

Reasons for the Decision

1.   *Admissibility of the appeal*

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

The respondents' main request

2.   *Novelty*

        The appellants accept that the subject-matter of
        independent claims 1 and 8 of the patent-in-suit in the
        granted version is new (Article 54 EPC).

3.   *Inventive step*

3.1   The appellants have argued that the invention is
        obvious with respect to D5 as well as D3. The Board
        will consider both documents.

3.2   D5 describes a system for automatically correlating
        user preferences with a database of television program
        information. The system includes first, second and
        third memory sections (52,54,56 in figure 3). The first
        section 52 contains downloaded TV program information
        data records. The second section 54 stores records
        selected from the first section which have been
        indicated as "liked" or "disliked" by the user (col. 4,

l. 17-26). The third section 56 contains a subset of the records in the first section. This subset is selected in accordance with two criteria: either a record has been flagged as "liked", or it belongs to those records which have obtained the highest "retrieval values". These values are automatically computed by the system on the basis of the "like" and "dislike" indications. The selected records are chronologically ordered. The third section 56 is thus a personalized version of the downloaded TV database (col. 5, l.33 - col. 6, l.24).

3.3   The appellants have argued essentially as follows. In D5 preferred programs are stored in the third memory section 56. The contents of this section are regularly updated. It could happen that during an update newly added programs take the place of previous, unexpired items because they have an earlier air time (cf the hypothetical example given in the statement of grounds, sections 7.3 and 7.4). The effect is that such unexpired items are automatically deleted, as required by claim 1. The only new feature in the claim is therefore the automatic deletion of *expired* program schedule information from the storage means to create free space to accommodate storage of new program schedule information. Since this feature is conventional (reference was made to D6, col. 6, l. 25 to 31 and col. 7, l. 5 to 7; and D3, p. 21, l. 22 onwards), the subject-matter of claim 1 does in the appellants' view not involve an inventive step.

3.4   The respondents have argued that D5 is not a good starting point for assessing the inventive step. If anything it led away from the invention. It did not

address the relevant problem, which was to create
additional free space in the EPG memory. In D5 it was
apparently assumed that sufficient memory was always
available.

3.5   The opposition division decided that D5 does not render
the invention obvious. The Board agrees. There is in
the Board's view no disclosure in D5, explicit or
implicit, of unexpired data being deleted. The
appellants' hypothetical example relies on the
observation that, in practice, an EPG memory inevitably
underlies cost and size constraints. This is no doubt
true. However, D5 is not an actual memory but a piece
of information about a memory. The purpose of D5 is to
convey an idea, namely how to generate a personalized
version of a downloaded TV program database. The
skilled person studying D5 will consider this idea
within the context of the description but, since he is
aware that the author of D5 only intended to present a
concept but not to design a working system, not
necessarily beyond that context. Thus, because there is
no mention of memory size constraints in D5 the skilled
person had no reason to imagine what would happen if
the memory 56 for reasons of economy were chosen to be
too small to store the required data. This is all the
more so since memory section 56 as described is smaller
than section 52 and thus in any case less critical in
terms of size and cost than section 52. Also, there is
nothing *inevitable* about the memory section 56 being
too small in a practical situation: it would always be
technically possible to make it large enough to store
all data needed.

Finally, even if the appellants' assumption that memory section 56 is subject to space limitations were accepted, document D5 does not give any indication of how an update situation would then be handled. The appellants' hypothetical example does not distinguish between records actually flagged by the viewer as "liked" and those suggested by the system on the basis of retrieval values. This distinction may well lead to different update scenarios. For example, D5 does not allow determining what would happen in the event that the system suggests a new entry but the memory is already completely filled with flagged records.

3.6   The Board thus concludes that, contrary to the appellants' view, D5 does not disclose the characterising part of claim 1, ie the "means for automatically deleting, as needed to create additional free space in the storage means for storage of new program schedule information, unexpired program schedule information according to a value of its current utility to a viewer". Nor does it relate to the problem which this feature solves, viz to make room for EPG updates. It follows that D5 cannot render the invention obvious.

3.7   The appellants have further argued that the subject-matter of the independent claims is obvious having regard to document D3 and general technical knowledge. In the patent-in-suit the preamble of claim 1 was acknowledged to be known from D3. There was no technical difference between deleting unexpired program schedule information and deleting expired program schedule information. Only the data specifying the time limit for deletion were different.

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3.8   D3 describes a system including a cable head end for
        managing EPG data received from external suppliers. The
        cable head end deletes expired EPG data blocks (see
        figure 5 and p. 21, l. 22 onwards). It transmits one or
        two weeks of EPG data to a subscriber's set top
        tuner 34 where it is stored in EPG memory 36 (see
        figures 1 and 7). Updates are performed every 30
        minutes or when there is a program change. It is
        pointed out that different set top tuners 34 may have
        varied amounts of memory in accordance with the
        acceptable memory costs (see p. 9, l. 20 to p. 10,
        l. 2).

3.9   The present invention is different from this prior art
        in that the memory management of EPG data is located in
        the receiving unit, not the transmitting unit. The
        receiving unit in D3 is the set top tuner 34. Although
        D3 does mention the issue of memory cost, no conclusion
        from this constraint seems to be drawn except that
        expired data should be deleted. This is done in D3 by
        removing expired EPG blocks from the memory in the
        cable head end and updating the set top tuner memory
        correspondingly. Since all set top tuners within the
        system are apparently treated the same way and merely
        reflect the memory contents in the cable head end, the
        skilled person had no reason to consider any further
        deletion schemes in the individual set top tuners. Nor
        would it be obvious to delete unexpired program data in
        the cable head end since the central memory would
        hardly underlie severe cost constraints. Furthermore,
        the claimed automatic deletion of unexpired program
        schedule information according to its current utility
        to an individual user requires that the user's set top

box control the deletions, not a central unit common to all users. In other words, D3 cannot reasonably be seen as suggesting either the problem underlying the present invention or its solution. As to the appellants' argument that there is no technical difference between deleting expired and unexpired information it has to be considered that claim 1 includes means for automatically deleting data according to a value of its current utility to a viewer. The invention is thus not merely a matter of changing data representing a time limit.

3.10   It follows that the subject-matter of the claims of the patent as granted is not obvious having regard to D5 or D3. Thus, it involves an inventive step (Article 56 EPC).

The respondents' auxiliary requests

4.   Since the respondents' main request is granted there is no need to consider the auxiliary requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek   S. Steinbrener