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**Datasheet for the decision
of 9 May 2011**

Case Number: T 0293/05 - 3.5.04

Application Number: 97924798.8

Publication Number: 0900499

IPC: H04N 7/16

Language of the proceedings: EN

Title of invention:

Television schedule system with access control

Applicant:

Starsight Telecast, Inc.

Headword:

-

Relevant legal provisions:

RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):

EPC Art. 56

EPC R. 67, 68(2)

Keyword:

"Basis of decision - decision reasoned (yes)"

"Admission into proceedings (no) - main request and first and second auxiliary requests"

"Inventive step (yes) - third auxiliary request"

"Reimbursement of appeal fee (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0293/05 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 9 May 2011

Appellant: Starsight Telecast, Inc.
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Representative: Kinsler, Maureen Catherine
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 6 October 2004
refusing European patent application
No. 97924798.8 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: F. Edlinger
Members: M. Paci
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division posted on 6 October 2004 refusing European patent application No. 97924798.8, which was published as WO 97/46016 A1.
- II. The following documents were cited as prior art in the decision under appeal:
- D1: US 5 382 983 A and
D2: WO 94/13107 A1.
- III. The decision under appeal was based on the ground that claim 1 did not involve an inventive step (Article 56 EPC 1973) in view of the disclosures of D1 and D2.
- IV. With the statement of grounds of appeal the appellant (applicant) filed a set of amended claims replacing all previous claims. The appellant also submitted *inter alia* that the decision under appeal was "improper and without basis" because it was based on insufficient evidence and unsubstantiated, and complained that, in the communication annexed to the summons to the oral proceedings, the examining division had cited against claim 4 the following document not belonging to the prior art:
- D3: "Parental Choice in Television Programming",
Federal Communications Commission, XP-002100791.
- The appellant requested oral proceedings and the reimbursement of the appeal fee under Rule 67 EPC 1973.

V. In a communication accompanying the summons to the oral proceedings, the board expressed the provisional opinion that:

- the decision under appeal met the requirements of Rule 68(2) EPC 1973;
- the set of claims filed with the grounds of appeal did not comply with the requirements of Article 123(2) EPC (added subject-matter), Article 84 EPC 1973 and Rule 29(2) EPC 1973 (concision) and Article 56 EPC 1973 (inventive step); and
- the relevant text of D3 belonged to the prior art.

VI. With a letter dated 27 April 2009, the appellant filed sets of amended claims according to a main request and a first auxiliary request, respectively, replacing all previous claims. The appellant also informed the board that it would not be attending the oral proceedings.

VII. The oral proceedings were held on 27 May 2009. The appellant did not attend. At the end of the oral proceedings, the chairman announced that the procedure would be continued in writing.

VIII. In a communication dated 10 June 2009, the board informed the appellant that the amended claims according to the main and first auxiliary requests did not meet the requirements of Article 123(2) EPC. Moreover, the board stressed that, in view of the very late stage of the proceedings, the need for procedural economy required that the board exercise its discretion under Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536) in a strict manner

with regard to any amendment filed in response to the board's communication.

- IX. With a letter dated 10 September 2009, the appellant filed sets of amended claims according to a main and first to third auxiliary requests, respectively, replacing all previous claims, and amended description pages 2, 3, 5, 6, 7 and 15.
- X. The appellant's final requests are that the decision under appeal be set aside, that a patent be granted on the basis of the claims submitted with letter of 10 September 2009, in the order of the main request to the third auxiliary request, and that the appeal fee be reimbursed. The appellant explained that the new claims comprised a set 1 (main request and first auxiliary request) and a set 2 (second and third auxiliary requests). The sole difference between the two sets was that in set 1 the recitation of the memory had been deleted, with the intention that the claims be better supported by the description as filed. However, the appellant stated "If the Board feels that this excision is not justified then we ask them to turn to set 2." As to the amended description pages, the appellant further stated that "If the Board believes that any of these amendments to the description is unnecessary then we are content with their judgement."
- XI. Independent claim 1 according to the **main request** reads as follows:

"A method of exercising access control over television programs comprising the steps of:

using a device at a receiving location for accepting viewer input of a criterion for blocking the television programs from being viewed, where said blocking criterion is any of time, rating, content, and channel;

displaying television program schedule information comprising a plurality of television program listings on a screen;

using the device at the receiving location for accepting viewer selection of one of the displayed listings for viewing or recording a television program represented by the listing;

accessing the stored blocking criterion to determine if the program represented by the selected listing meets the blocking criterion;

requesting a viewer to enter a password if the program meets the blocking criterion;

receiving and processing an entered password to determine if it is a correct password;

responsive to entry of a correct password, modifying the blocking criterion, allowing the program to be viewed or recorded; and

restoring the blocking criterion after the program is over if the program was scheduled for recording, or after tuning away from the program."

XII. Independent claim 1 according to the **first auxiliary request** reads as follows:

"A method of exercising access control over television programs comprising the steps of:

using a device at a receiving location for accepting viewer input of a criterion for blocking the television programs from being viewed, where said

blocking criterion is any of time, rating, content, and channel;

displaying television program schedule information comprising a plurality of television program listings on a screen;

using the device at the receiving location for accepting viewer selection of one of the displayed listings for viewing or recording a television program represented by the listing;

accessing the stored blocking criterion to determine if the program represented by the selected listing meets the blocking criterion;

requesting a viewer to enter a password if the program meets the blocking criterion;

receiving and processing an entered password to determine if it is a correct password;

responsive to entry of a correct password, modifying the blocking criterion, allowing the program to be viewed or recorded; and

restoring the blocking criterion after the program is over if the program was scheduled for recording, or after tuning off a previously locked channel upon which the program is being aired."

XIII. Independent claim 1 according to the **second auxiliary request** reads as follows:

"A method of exercising access control over television programs comprising the steps of:

using a device at a receiving location for accepting viewer input of a criterion for blocking the television programs from being viewed, where said blocking criterion is any of time, rating, content, and channel;

storing the blocking criterion in a memory;
displaying television program schedule information comprising a plurality of television program listings on a screen;

using the device at the receiving location for accepting viewer selection of one of the displayed listings for viewing or recording a television program represented by the listing;

accessing the stored blocking criterion from the memory to determine if the program represented by the selected listing meets the blocking criterion;

requesting a viewer to enter a password if the program meets the blocking criterion;

receiving and processing an entered password to determine if it is a correct password;

responsive to entry of a correct password, modifying the blocking criterion in the memory, allowing the program to be viewed or recorded; and

restoring the blocking criterion in the memory after the program is over if the program was scheduled for recording, or after tuning away from the program."

XIV. Independent claims 1 and 11 according to the **third auxiliary request** read as follows:

"1. A method of exercising access control over television programs comprising the steps of:

using a device at a receiving location for accepting viewer input of a criterion for blocking the television programs from being viewed, where said blocking criterion is any of time, rating, content, and channel;

storing the blocking criterion in a memory;

displaying television program schedule information comprising a plurality of television program listings on a screen;

using the device at the receiving location for accepting viewer selection of one of the displayed listings for viewing or recording a television program represented by the listing;

accessing the stored blocking criterion from the memory to determine if the program represented by the selected listing meets the blocking criterion;

requesting a viewer to enter a password if the program meets the blocking criterion;

receiving and processing an entered password to determine if it is a correct password;

responsive to entry of a correct password, modifying the blocking criterion in the memory, allowing the program to be viewed or recorded; and

restoring the blocking criterion in the memory after the program is over if the program was scheduled for recording, or after tuning off a previously locked channel upon which the program is being aired."

"11. An apparatus for exercising access control over a television program comprising:

a display screen;

a device at a receiving location, the device being adapted to accept viewer input of a criterion for blocking television programs from being viewed where said blocking criterion is any of time, rating, content and channel;

a memory for storing the blocking criterion;

means for displaying television program schedule information comprising a plurality of television program listings in guide format on the screen;

means for using the device for accepting viewer selection of one of the displayed listings for viewing or recording a television program represented by the listing;

means for accessing the stored blocking criterion from the memory to determine if the program represented by the selected listing meets the blocking criterion;

means for prompting a viewer on the screen to enter a password if the program meets the blocking criterion;

means for receiving and processing an entered password to determine if it is a correct password;

means for modifying the blocking criterion in the memory, responsive to entry of a correct password, to allow the program to be viewed or recorded; and

means for restoring the blocking criterion in the memory after the program is over if the program was scheduled for recording, or after tuning off a previously locked channel upon which the program is being aired."

Claims 2 to 10 according to the third auxiliary request are dependent on claim 1.

XV. Claim 1 on which the decision under appeal was based reads as follows.

"A method of exercising access control over television programs comprising the steps of:

entering a criterion for blocking the television programs from being viewed, where said blocking criterion is any of time, rating, content, and channel;

displaying a plurality of television program listings on a screen;

selecting one of the displayed listings for viewing or recording a television program represented by the listing;

requesting a viewer to enter a password if the selected listing represents a blocked program;

responsive to entry of a correct password, temporarily unblocking the program which has been chosen for blocking so it can be viewed or recorded; and

restoring the blocking criterion after the program is over or the program is no longer tuned to."

XVI. The examining division's reasoning in the decision under appeal reads as follows.

"1. The method of claim 1 is a method of exercising access control over television programs. The method permits entry of a criterion for blocking television programs, the criterion being any of time, rating, content and channel. A program guide is displayed on screen and a viewer may select one of the programs displayed in the guide for viewing or recording. If the program happens to be a blocked program then the viewer is requested to enter a password and then, if the correct password is entered, the program is temporarily unblocked to permit viewing or recording. When the viewer has stopped viewing that program the blocking condition for that program is restored.

2. The claimed method combines the two well-known functions of program guide and access control. The prior art document WO 94/13107 contains extensive disclosure of the use of program guides (see, for

example, figure 16a) and refers to "parental lock" at line 24 on page 30, parental lock being a synonym for access control. More detailed information as to access control is given in US 5,382,983.

3. The examining division is of the view that where a viewer uses a program guide to select a program or channel then it is self-evident to the skilled person that if that program or channel has been blocked then the TV set will not display that program or channel. What it will do is ask the viewer for a password and if the correct password is entered the TV set will then display the selected program or channel. It is also considered self-evident to the skilled person that once that program or channel is no longer being viewed then the blocking function will come back into operation to prevent a child or other unauthorised person viewing a program or channel after a parent or other authorised person has stopped viewing that program or channel. That, in essence, is the method of claim 1. The claim specifies that the blocking criterion may be any of time, rating, content or channel and US 5,382,983 specifically discloses blocking on the basis of channel or time (see figure 10 and also column 3 at lines 48-51). The US document also discloses, e.g. at column 4, lines 33-40 and in figure 7, the use of a password for blocking and unblocking program material, though it uses the expression "identification code" instead of "password". The division is therefore of the view that the method of claim 1 is merely the combination of two well-known functions, the use of a program guide as exemplified by WO 94/13107, and access control, referred to in WO 94/13107 and described in more detail in US 5,382,983, the combination functioning exactly as

the skilled person would expect it to function. The division is therefore of the view that the subject matter of claim 1 lacks inventive step. Independent apparatus claim 12 corresponds exactly with the method of claim 1 and so the subject matter of claim 12 is also considered to lack inventive step."

XVII. The appellant essentially argued in writing as follows.

Sufficiency of the evidence in the contested decision

The examining division refused the patent application on improper grounds as it offered insufficient evidence in support of its "view" that certain features of claims 1 and 12 were self-evident to the skilled person. The examining division failed to demonstrate that claims 1 and 12 were either anticipated by or obvious in view of the cited prior art and, thus, the division's "view" as to certain features of the claim being self-evident was entirely unsubstantiated. For this reason alone, the decision was improper and should therefore be set aside in its entirety.

Admissibility (main and first through third auxiliary requests)

The claims according to these four requests have been amended with a view to overcome all the objections raised by the board in its communication dated 10 June 2009. Hence these requests should be admitted into the proceedings. Four sets of amended claims have been submitted, as a matter of precaution and in order to ensure that no further amendment of the application documents is necessary. The appellant admitted that the

wording "after tuning away from the program" (claim 1 of the main request and second auxiliary request) was not found *expressis verbis* in the application as filed which instead referred to "the user tunes off a previously locked channel". However the appellant expressed his belief that the skilled person reading the description as originally filed and reading the amended claim would not see a conflict.

Inventive step (third auxiliary request)

The examining division combined the teachings of D1 and D2 in hindsight, with no justification other than a brief mention of the disclosure of "parental lock" in D2. It merely stated that D2 contained extensive disclosure of the use of program guides and referred to "parental lock" at line 24 on page 30. It further asserted that "parental lock" was a synonym for access control and then relied on D1 for more detailed information as to access control.

In essence, the examining division based its decision on the apparent assumption that there was only one obvious way to implement both parental control blocking and unblocking. This reasoning was incorrect and based on hindsight. With respect to blocking, there were many ways of implementing it: parental locks could block operation of the television entirely until manually unlocked, block operation of the television entirely based on time and/or date, block particular channels regardless of time, block particular channels based on time and/or date, block a program (where the time/date/channel combination may vary or be changed after the program to be blocked is chosen), and block

programs based on content (e.g., violence, language, nudity).

The only disclosure in D2 regarding "parental lock" was an LED on the display indicating "parental lock." D2 did not disclose or suggest anything that would lead the skilled person to conclude that this "parental lock" was anything more than merely a manually operated blocking of the operation of the television entirely.

D1 described a system for total parental control of television use, which operated by allowing the user to override the parental control operation to permit normal television viewing. Once parental control operation had been overridden, it remained inactive until the television had been turned off or until the operation was manually reactivated. This operation was described in figure 5, as well as in column 5, line 57, to column 7, line 49, of D1. D1 did not explicitly show "restoring the blocking criterion in the memory after the program is over if the program was scheduled for recording, or after tuning off a previously locked channel upon which the program is being aired", as defined in amended claim 1. This feature of amended claim 1 was not shown by D2 either.

Hence claim 1 involved an inventive step in view of D1 and D2.

Citation of D3 by the examining division in the summons to the oral proceedings

Document D3, which was published after the priority date of the present application, was cited against

claim 4 in the communication annexed to the summons to the oral proceedings before the examining division. Since D3 was not prior art, any objection to claim 4 based upon D3 was unfounded.

Moreover, the examining division's reasoning behind the objection to claim 4 of the refused application was improper and appeared to be based on the combination of three prior-art documents (along with D1 and D2).

Request for reimbursement of the appeal fee

The reimbursement of the appeal fee was requested because the decision under appeal was improper and without basis.

Reasons for the Decision

1. The appeal is admissible.

Procedural matters

2. The appellant has submitted that the decision was "improper" and "without basis" as the examining division offered insufficient evidence in support of its view, and that "for this reason alone" the decision under appeal should be set aside.
3. Under Rule 68(2) EPC 1973, decisions of the EPO which are open to appeal must be reasoned. According to the established jurisprudence of the boards of appeal, in order to meet this requirement the decision must contain a logical chain of facts and reasons on which

the decision is based (see Case Law of the Boards of Appeal of the European Patent Office, 6th edition, July 2010, VI.J.5.3.3).

4. Under points 2 and 3 of the decision under appeal, the examining division provided reasons as to why the subject-matter of claims 1 and 12 lacked inventive step. In the board's judgment, these reasons contained a logical chain of facts and reasons. Most of these facts were based on the evidence provided by D1 and D2, the relevant parts of which were identified. However the appellant is correct in stating that the examining division also regarded certain steps of the method of claim 1 as "self-evident to the skilled person" without providing evidence in support thereof. From points 2 and 3 of the decision the board understands the above quoted expression as meaning that these steps would have been evident to the skilled person, taking into account his common general knowledge and his normal skills, when attempting to combine the well-known functions of program guide and access control. In view of the nature of these steps, and in particular of the fact that they imply no complex technical considerations, the board regards the examining division's assertions of self-evidence as being sufficiently substantiated to meet the minimum requirements for a reasoned decision.

5. For the above reasons, the board concludes that the decision under appeal complies with the requirements of Rule 68(2) EPC 1973 and that therefore no fundamental deficiency is apparent in the first-instance proceedings in this respect.

6. The appellant complained in the statement of grounds of appeal that the examining division had cited D3 in the summons to the oral proceedings even though this document had been published after the priority date of the present application.

As the board has already set out in the provisional opinion accompanying the summons to oral proceedings, D3 was not used by the examining division in the decision under appeal. Therefore, the appellant's right to be heard was not violated by citing this document in preparation for oral proceedings. The appellant did not submit any submissions on this opinion.

Admissibility of the appellant's amendments

7. According to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal may be admitted and considered at the board's discretion. The discretion shall be exercised in view of *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.
8. In the present appeal, the appellant filed, with the letter dated 10 September 2009, four sets of amended claims according to a main and first to third auxiliary requests, respectively, replacing all previous claims.
9. The above amendments were filed in response to the board's communication dated 10 June 2009, in which the board informed the appellant that the amended claims according to the main and first auxiliary requests filed with the appellant's letter dated 27 April 2009

and considered during the oral proceedings held on 27 May 2009, which the appellant did not attend, did not meet the requirements of Article 123(2) EPC. In the above communication, the board added that since these deficiencies could have been overcome during the oral proceedings, which the appellant did not attend, the need for procedural economy required that the board, regarding any amendment to the appellant's case filed in response to this communication, exercise its discretion under Article 13(1) RPBA in a strict manner.

10. Admissibility of the amended claims according to the main request and first auxiliary request

The appellant has indicated that in claim 1 of these requests the step of "storing the blocking criterion in a memory" and any further mention of the memory, present in claim 1 according to the previous main request, had been deleted with the intention that the claim be better supported by the description as filed. The board considers that these amendments create confusion because, on the one hand, any reference to a memory and to a step of storing the blocking criterion in a memory has been removed from the method and, on the other hand, the method comprises a step of "accessing the **stored** blocking criterion" (emphasis by the board).

The board is aware that claim 1 according to the previous auxiliary request did not mention a step of "storing the blocking criterion in a memory" or contain any mention of a memory and that the board did not object to the clarity of that claim in its communication dated 10 June 2009. However, in contrast

to claim 1 according to the present main and first auxiliary requests, the step of accessing the blocking criterion did not mention that the blocking criterion was "stored". Thus the confusion mentioned in the above paragraph did not exist in claim 1 according to the previous auxiliary request.

The board thus takes the view that the above amendments made to claim 1 according to the main and first auxiliary requests are neither appropriate at this stage of the proceedings, nor justified. Therefore the board does not admit these amendments pursuant to Article 13(1) RPBA and turns to the second and third auxiliary requests in accordance with the appellant's request (see point X above).

11. Admissibility of the amended claims according to the second auxiliary request

The appellant has admitted that the wording "after tuning away from the program" was not found *expressis verbis* in the application as filed, which instead referred to "the user tunes off a previously locked channel" (see point XVII above). The board considers that the terms program and channel are not necessarily equivalent in the context of watching live programs on a given channel. The board considers it inappropriate to reopen a discussion on these issues at the present stage of the proceedings when the appellant has had the possibility of using an expression which is directly and unambiguously disclosed in the application as filed (see the third auxiliary request).

Hence the board has decided to exercise its discretion under Article 13(1) RPBA to refuse to admit the amended claims according to the appellant's second auxiliary request.

12. Admissibility of the amended claims according to the third auxiliary request

The board is satisfied that the amendments made to claims 1 and 11 according to the third auxiliary request overcome the objections raised in its communication of 10 June 2009 and do not raise new ones. Moreover, these limiting amendments do not substantially shift the claimed subject-matter or add to the complexity of the case.

For these reasons, the board has decided to admit the claims according to the appellant's third auxiliary request into the proceedings.

Substantive matters

Third auxiliary request - inventive step (Article 56 EPC 1973)

13. Claim 1

13.1 Closest prior art

It is undisputed that D1 represents the closest prior art.

D1 discloses a method of (and apparatus for) parental control of the use of television receivers. A parental control circuitry (see column 3, lines 21 to 62) and a

peripheral device (remote controller; see column 4, lines 13 to 40 and 12 in figure 1) for accepting viewer input enable viewers to include or exclude programs based on criteria such as time, rating, content or channel (see column 3, lines 48 to 51, and column 10, lines 54 to 68). More specifically, when the total parental control mode of operation is selected (via key switch 33 in TPC position, see figures 1 and 4), the selections which are available by inclusion or not available by exclusion are displayed on the TV screen upon turning on the TV (see figure 6 and column 5, lines 44 to 49). The user of the apparatus may then select one of the programs that is available for viewing and, upon completion of viewing, the TV is switched off (see column 5, lines 50 to 53). If the parental control must be modified, the pushing of the total parental control key 29 on the remote controller by the viewer will cause a menu to appear requesting the user to enter a password (see column 5, lines 57 to 61 and figure 7). Upon entry of the correct password a menu is displayed on the screen, allowing the user to include or exclude programs based on one or more selection criteria (see figure 10 and column 6, lines 22 to 35). Once the user has selected a criterion, a corresponding menu showing the previous selection is displayed (see column 6, lines 45 to 54). The user may delete previously selected programs (see column 6, lines 55 to 63) or add new ones by changing the blocking criteria (see column 7, lines 34 to 49). The amended blocking criteria are stored in a memory after being checked for inconsistencies (see column 7, line 50, to column 8, line 7). Programs to be added can also be selected with the cursor keys on an electronic TV schedule displayed on the TV screen (see column 7,

lines 3 to 33). The electronic TV schedule is received either in the vertical blanking interval or as a video program (see column 7, lines 22 to 25). The user may also (by pushing button 6) temporarily override the parental control for normal TV viewing, "after which the TV will be shut off in step 319 or the menu of FIG. 10 may again be displayed in step 320 by pushing the MENU key 37 shown in FIG. 1." (see column 6, lines 35 to 44, and figure 5).

13.2 Distinguishing features

The method of claim 1 according to the third auxiliary request thus differs from that of D1 by the steps of:

- (a) "requesting a viewer to enter a password if the program meets the blocking criterion;"
- (b) "receiving and processing an entered password to determine if it is a correct password;"
- (c) "responsive to entry of a correct password, modifying the blocking criterion in the memory, allowing the program to be viewed or recorded;" and
- (d) "restoring the blocking criterion in the memory after the program is over if the program was scheduled for recording, or after tuning off a previously locked channel upon which the program is being aired."

13.3 Objective technical problem

The appellant submitted that the objective technical problem solved by the method of claim 1 was how to facilitate access to blocked content whilst preventing inadvertent viewing of blocked content (see page 5 of the appellant's letter dated 27 April 2009). The board

has no objection to this formulation of the objective technical problem.

13.4 Obviousness in view of D1 alone

D1 states that when the total parental control mode of operation is selected (via key switch 33 in TPC position, see figures 1 and 4), the selections which are available by inclusion or not available by exclusion are displayed on the TV screen upon turning on the TV (see column 5, lines 44 to 49). In other words, the user may see on the TV screen either a list of the allowed programs or a list of the excluded programs. The former case (list by inclusion) is described in detail in D1 (see, for instance, figure 6), whereas the latter case (list by exclusion) is not.

In the case of a list by exclusion, the user must be able to select a non-excluded program which, by definition, is not on the exclusion list. The system of D1 would then have to check whether the selected program is on the exclusion list. If the selected program listing is on the exclusion list, the corresponding program will not be displayed. Instead, the user will presumably be shown either a blank screen or a message informing him/her that access to the program is denied. A parent might then enter the total parental control mode by entering a correct password, as in the case disclosed in the context of a list of inclusions (D1, figures 5 and 6). Once in this mode, modifications could be made by selecting and modifying excluded programs without entering a password at this stage, or the parent might override all exclusions.

The examining division argued that it was self-evident to the skilled person that the system of D1 would, at this stage, "ask the viewer for a password and if the correct password is entered the TV set will then display the selected program or channel" (see point 3 of the appealed decision). The board is not convinced that this would have led the person skilled in the art to a password-operated modification of the stored and program-related blocking criterion, because it would raise new problems, such as to what extent the access control should be lifted and for how long. For instance, if the user had entered the correct password, would all the exclusions be lifted, or only those concerning the selected program? Or if the user had selected a channel rather than a program, would the exclusions be lifted for the current program or for the whole channel?

Regarding these questions, it is of relevance that the system of D1 offers the option of overriding exclusions already set up, but in a different context. Indeed, while in the parental control menu shown in figure 10, which allows the user to set or delete exclusions and can only be accessed by entering a correct password, the user can override all exclusions to allow normal TV viewing by pushing key number 6 on the remote controller (see column 6, lines 35 to 39). Apparently, this overriding function remains active until the TV is switched off or until the user presses the MENU key on the remote controller in order to go back to the parental control menu shown in figure 10 (see column 6, lines 40 to 44, and steps 316 to 320 in figure 5).

For the above reasons, the board is not convinced that it would have been obvious for the skilled person to

adapt the system of D1 so that it would offer to a user who has just selected an excluded program the possibility of overriding the exclusion at this stage by entering a correct password (i.e. steps corresponding to distinguishing features (a), (b) and (c) under point 13.2 *supra*). Moreover, even if it were assumed that the skilled person would have considered adding such an overriding function, he/she would have logically modelled it on the only overriding function disclosed in D1 (described in the previous paragraph), i.e. an overriding function which allows normal TV viewing of all programs until the TV is switched off or until the user presses the MENU key. This does not include any program-related step of "restoring the blocking criterion in the memory after the program is over if the program was scheduled for recording, or after tuning off a previously locked channel upon which the program is being aired" (i.e. the distinguishing feature (d) under point 13.2 *supra*).

Hence the method of claim 1 is not obvious in view of D1 alone.

13.5 Obviousness in view of D1 and D2

D2 discloses an advanced set-top terminal with menu-generation capabilities comprising an electronic TV guide (see figure 16a) and mentioning a parental lock (see page 30, line 24, and page 63, line 7). However, D2 provides no details about the parental lock. Thus, D2 does not disclose or suggest anything that would lead the skilled person to conclude that this "parental lock" is anything more than a manually operated blocking of the operation of the television entirely.

Hence the method of claim 1 is also not obvious in view of D1 and D2.

13.6 Conclusions

For the above reasons, the method of claim 1 according to the third auxiliary request is not rendered obvious by D1 and D2, taken alone or in combination.

14. Claim 11

The apparatus of claim 11 according to the third auxiliary request comprises features corresponding to the steps of the method of claim 1 according to the third auxiliary request.

As a result, the conclusion reached for claim 1 also applies to claim 11.

15. Claims 2 to 10

These claims are dependent on claim 1. Hence their subject-matter is also not suggested by D1 alone or in combination with D2.

Request for reimbursement of the appeal fee

16. Under Rule 67 EPC 1973, the reimbursement of appeal fees shall be ordered where the board of appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

In the present case, the board considers the appealed decision sufficiently reasoned within the meaning of Rule 68(2) EPC 1973 (see points 2 to 5 *supra*) and sees no procedural violation in the citation of D3 by the examining division in the communication annexed to the summons to the oral proceedings (see point 6 *supra*). The appellant has not alleged any further procedural violation, nor is any apparent from the file.

Since a reimbursement of appeal fees under Rule 67 EPC 1973 can only be ordered "if such reimbursement is equitable by reason of a substantial procedural violation", the request for reimbursement of the appeal fee must be refused.

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 grant a patent with the following claims and a description to be adapted:

Claims:

No. 1 to 11 according to the third auxiliary request filed with letter of 10 September 2009.

3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

L. Fernández Gómez

F. Edlinger