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**Datasheet for the decision
of 25 March 2009**

Case Number: T 0654/05 - 3.5.04

Application Number: 98958538.5

Publication Number: 1038393

IPC: H04N 5/445

Language of the proceedings: EN

Title of invention:

Program guide system with browsing display

Patentee:

United Video Properties, Inc.

Opponent:

Interessengemeinschaft für Rundfunkschutzrechte e.V. (IGR e.V.)

Headword:

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Relevant legal provisions:

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Relevant legal provisions (EPC 1973):

EPC Art. 56

Keyword:

"Inventive step - no (all requests)"

Decisions cited:

-

Catchword:

-



Case Number: T 0654/05 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 25 March 2009

Appellant: United Video Properties, Inc.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 17 March 2005
revoking European patent No. 1038393 pursuant
to Article 102(1) EPC 1973.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal was filed against the decision by the opposition division to revoke European patent No. 1 038 393.

- II. The patent in suit was revoked on the ground that the subject-matter of the independent claims as granted lacked an inventive step in view of the prior art document:

D1: WO 96/07270 A1.

- III. The patentee filed an appeal and a statement of grounds of appeal requesting that the patent be maintained as granted. The opponent filed a reply setting out counterarguments dated 10 December 2005.

- IV. With a letter dated 12 April 2007 the opponent withdrew the opposition.

- V. In a communication accompanying the summons to oral proceedings the board made observations regarding the obviousness of the subject-matter of claim 1 as granted and noted that it tended to agree with the decision under appeal.

- VI. With a letter dated 25 February 2009 the appellant (patentee) filed first to third auxiliary requests and expressed the hope that the appeal could be dealt with in writing and without the need for oral proceedings.

- VII. In a short communication dated 12 March 2009 the board informed the appellant that the oral proceedings of 25 March 2009 were upheld.
- VIII. With a letter dated 13 March 2009 the appellant informed the board that it would not attend the oral proceedings. The appellant further requested that the opposed patent be maintained as granted according to the main request or that the patent be maintained on the basis of any of the first to third auxiliary requests, to be considered in this order, submitted with the letter dated 25 February 2009.
- IX. In a communication dated 19 March 2009, sent by facsimile to the appellant on the same day, the board made further observations regarding the obviousness of the subject-matter of claim 1 according to the requests on file.
- X. The board held oral proceedings on 25 March 2009 in the absence of the appellant.
- XI. Claim 1 (as granted) according to the main request reads as follows:
- "An interactive television program guide system implemented on user television equipment, comprising:
- means (70) for simultaneously displaying (a) a program list (74) that contains multiple program listings, that only contains program listings for programs that are currently being broadcast, and that has a highlight region (80) for highlighting a given one of the program listings, (b) a video window (76) that contains an

unobstructed view of a television program, and (c) a detailed program description (78) of the highlighted program listing; and

means (50) for allowing the user to position the highlight region among the program listings;

characterized by means for automatically updating the detailed program description to correspond to the highlighted program listing whenever the highlight region is positioned on a new program listing while leaving the television program in the video window unchanged."

XII. Claim 1 according to the first auxiliary request reads as follows:

"An interactive television program guide system implemented on user television equipment, comprising:

means (70) for simultaneously displaying (a) a program list (74) that contains multiple program listings, that only contains program listings for programs that are currently being broadcast on a plurality of channels, and that has a highlight region (80) for highlighting a given one of the program listings, (b) a video window (76) that contains an unobstructed view of a television program, and (c) a detailed program description (78) of the highlighted program listing;

means (50) for allowing the user to position the highlight region among the program listings;

characterized by means for automatically updating the detailed program description to correspond to the highlighted program listing whenever the highlight

region is positioned on a new program listing while leaving the television program in the video window unchanged as the highlight region moves between channels."

XIII. Claim 1 according to the second auxiliary request reads as follows:

"An interactive television program guide system implemented on user television equipment, comprising:

means (70) for simultaneously displaying (a) a program list (74) that contains multiple program listings, that only contains program listings for programs that are currently being broadcast, and that has a highlight region (80) for highlighting a given one of the program listings, (b) a video window (76) that contains an unobstructed view of a television program, and (c) a detailed program description (78) of the highlighted program listing;

means (50) for allowing the user to position the highlight region among the program listings;

characterized by:

means for automatically updating the detailed program description to correspond to the highlighted program listing whenever the highlight region is positioned on a new program listing while leaving the television program in the video window unchanged; and

means for synchronising the television program in the video window and the highlighted program listing."

XIV. Claim 1 according to the third auxiliary request differs from claim 1 according to the second auxiliary request in that the last paragraph has been replaced by the following text:

"means for synchronising the television program in the video window and the highlighted program listing, wherein the means for synchronising comprises means for providing the user with an opportunity to select the highlighted program listing."

XV. The reasons in the decision under appeal regarding claim 1 as granted (main request) may be summarised as follows.

The system according to the invention differs from the system operated in the display mode shown in figure 2 of D1 ("NOW guide" display mode) only by the feature of the characterising portion of claim 1. The technical problem to be solved may be formulated as finding a way to browse through the program listings without losing track of what is on the channel to which the user was originally tuned. A user of the system watching the program would immediately recognise this problem. D1 already discloses another display mode allowing browsing while leaving the television program in the video window unchanged (see figure 3 and page 6, lines 16 to 25). It would be obvious for the skilled person to combine features of the two modes, once the problem has been identified. Therefore the subject-matter of claim 1 lacks an inventive step.

XVI. The arguments by the appellant may be summarised as follows.

- As in shopping, browsing a television guide is an activity that implies minimal commitment, which the invention proposes to maintain by easing the return to the originally chosen program.
- Recognising the problem formulated by the opposition division is part of the invention, since it requires thinking outside the box and goes further than merely overcoming shortcomings in the prior art.
- D1 teaches keeping the video in a PIP window in correspondence with the highlighted program listing whenever such a video is available. The invention could thus only be arrived at by reappraising the teaching of D1, isolating a small passage relating to another display mode and interpreting it with the invention in mind.
- The prior art requires the tuner to retune each time the video window is updated, which is a significant technical disadvantage and delays browsing.
- Claim 1 of the first auxiliary request more adequately distinguishes the system from that of D1 in that it specifies that the content of the video is unchanged as the highlight region moves between channels.
- The "means for synchronising the television program in the video window and the highlighted program listing" according to the second auxiliary request further improve the non-committal nature of the invention by introducing an intermediate

commitment, which goes further away from the teaching of D1.

- The separate and distinct act of selecting the highlighted program listing according to the third auxiliary request adds a further step to a non-obvious channel methodology contrasting with the teaching of D1, which attempts to avoid too many steps.

Reasons for the Decision

1. The appeal is admissible.

2. *Main request*

2.1 It is common ground that D1, acknowledged in paragraph [0004] of the patent specification, discloses an interactive television program guide system according to the preamble of claim 1. The known system, operating in a "NOW guide" display mode (figure 2), allows the user to browse among the program listings in a program schedule area (46) and comprises means for automatically updating details in a program description area (44) to correspond to the highlighted program listing whenever the highlight region (48) is positioned on a new program listing. However the television program in a video window (42) is also changed with the movement of the highlighted region (see page 2, lines 11 to 17; page 6, lines 13 to 15; and page 7, lines 20 to 34). Leaving the television program in the video window unchanged is foreseen only in other modes, in particular the distinct "NEXT guide" display mode of figure 3. Claim 1 of the main request

thus differs from D1 in "leaving the television program in the video window unchanged" when the highlight region is moved (between channels).

2.2 The technical problem

2.2.1 In the board's view part of the problem ("without losing track of the channel"), as formulated in the decision under appeal or in paragraph [0005] of the patent specification, contains a pointer to the solution ("leaving the television program... unchanged"), so that it is not an appropriate premise for assessing inventive step.

2.2.2 Leaving the television program in the video window unchanged has advantages and disadvantages. The system offers an advantageous effect in that it allows the user to keep an eye on what is on the originally tuned channel whilst browsing through other channels. This different information in the video window contributes to "non-committal" browsing which, as such, the board considers as a non-technical effect. From a technical standpoint, it may, in certain circumstances, also be advantageous in that it may dispense with the tuner changing frequency each time a different channel is highlighted. This reduces constraints on the tuner, makes the system less complex and reduces time delays for updating the detailed description when the user moves the highlight region among the program listings. It is however disadvantageous in that it may render the search less efficient in depriving the user of potentially useful video information.

2.2.3 The technical problem may therefore be formulated as providing a technically less complex program guide system which makes speedier browsing possible and yet offers a good compromise, concerning the presentation of information to the user, between the conflicting requirements of efficiency and "non-commitment".

2.3 The solution

2.3.1 D1 presents the display of video information corresponding to the currently highlighted program as facilitating the search (see for instance page 2, lines 11 to 17; and page 7, lines 25 to 27). D1 also envisages alternative embodiments of an electronic guide, in which the content of the video window does not correspond to the highlighted channel: for instance a "NOW guide" display mode without any video being displayed (see page 27, lines 15 to 18) or the "NEXT guide" display mode mentioned in point 2.1 above. The person skilled in the art would therefore not have associated the "NOW guide" mode according to D1 with the necessity to update the channel shown in the video window. D1 further mentions that deleting an unwanted program listing and blocking the tuner from being set to the corresponding channel contributes to speedier browsing (see page 13, lines 27 to 38). Moreover the description of the patent in suit mentions as prior art the usual browse mode as an overlay on top of the current television program which allows the viewer to browse among program listings whilst leaving the current television program unchanged in the background (see paragraphs [0006], [0020], [0021] and figure 2 of the patent specification).

2.3.2 As a result the person skilled in the art would have been aware of the technical constraints linked to frequency tuning as well as of the pros and cons of various presentations of information relating to the current channel (for instance presented as video) and to other channels (for instance presented as text information). The person skilled in the art would thus have envisaged leaving the television program unchanged in the "NOW guide" display mode according to D1 as an obvious measure to provide for simpler and speedier browsing and to enable the user to continue to watch the current program in the video window. Therefore, in the view of the board, the features of claim 1 resulted from an obvious design choice considering foreseeable advantages and drawbacks.

2.4 As a result the subject-matter of claim 1 of the main request does not involve an inventive step (Article 56 EPC 1973) and the main request is not allowable.

3. *First auxiliary request*

3.1 Claim 1 according to the first auxiliary request differs from claim 1 according to the main request essentially in that it sets out a correspondence between the multiple program listings and the movement of the highlight region between a plurality of channels. This correspondence has already been taken into account in the discussion relating to the main request.

3.2 As a result the subject-matter of claim 1 of the first auxiliary request does not involve an inventive step (Article 56 EPC 1973) for the same reasons as claim 1

of the main request. Thus the first auxiliary request is not allowable.

4. *Second auxiliary request*

4.1 Claim 1 according to the second auxiliary request differs from claim 1 according to the main request essentially in that it sets out in its last paragraph "means for synchronising the television program in the video window and the highlighted program listing".

4.2 These additional means for synchronising correspond, for example, to a SELECT key (see paragraphs [0012], [0019] and [0037] of the patent specification) and imply a further decision and the pressing of a key by the user.

4.3 This additional subject-matter is regarded by the board as an option for presenting further relevant information relating to the highlighted program listing. It follows as a straightforward and obvious option from the choice of leaving the television program displayed in the video window unchanged in the first place.

4.4 As a result the subject-matter of claim 1 of the second auxiliary request does not involve an inventive step (Article 56 EPC 1973). Thus the second auxiliary request is not allowable.

5. *Third auxiliary request*

5.1 Claim 1 according to the third auxiliary request differs from claim 1 according to the second auxiliary request essentially in that it sets out in its last

paragraph that the means for synchronising comprises "means for providing the user with an opportunity to select the highlighted program listing".

5.2 These means correspond to a key for exiting the program guide (for instance the "EXIT TO TV" key in figure 4 of the patent in suit). In the board's view it is the very purpose of a TV program guide to offer the possibility of selecting a program found to be interesting and returning to the normal TV mode. In D1 a GUIDE/TV key on the remote control offers this functionality and allows to view in full-screen mode the program displayed in the video window (42) (see page 2, lines 31 to 33; page 8, lines 33 to 37; figures 6 and 7).

5.3 As a result the subject-matter of claim 1 of the third auxiliary request does not involve an inventive step (Article 56 EPC 1973). Thus the third auxiliary request is not allowable.

6. In conclusion, none of the appellant's requests is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

L. Fernández Gómez

F. Edlinger