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**Datasheet for the decision  
of 17 September 2009**

**Case Number:** T 0948/05 - 3.5.04

**Application Number:** 00904377.9

**Publication Number:** 1157546

**IPC:** H04N 5/445

**Language of the proceedings:** EN

**Title of invention:**

A preferred service management system for a multimedia video decoder

**Patentee:**

Thomson Licensing

**Opponent:**

Interessengemeinschaft für Rundfunkschutzrechte e.V.

**Headword:**

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**Relevant legal provisions:**

RPBA Art. 13(1)

**Relevant legal provisions (EPC 1973):**

EPC Art. 56

**Keyword:**

"Inventive step - no"

"Auxiliary request admitted - no"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0948/05 - 3.5.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.04  
of 17 September 2009

**Appellant:** Thomson Licensing  
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**Representative:** Kerber, Thierry  
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**Respondent:** Interessengemeinschaft für  
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**Representative:** Kinnstätter, Klaus  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 20 May 2005  
revoking European patent No. 1157546 pursuant  
to Article 102(1) EPC 1973.

**Composition of the Board:**

**Chairman:** F. Edlinger  
**Members:** A. Teale  
C. Vallet

## Summary of Facts and Submissions

I. This is an appeal by the patentee against the decision by the opposition division revoking European patent No. 1157546.

II. The claims of the granted patent comprise claim 1 and dependent claims 2 to 12, claim 1 reading as follows. The labelling of features is that used in the appealed decision.

"f1. A method for enabling navigation through user selected favorite multimedia services

f2. with an on-screen display interface system utilizing video program data received from a plurality of different sources

comprising the steps of:

f3. generating a first menu display of a first set of favorite multimedia services comprising a sub-set of available services;

f4. selecting a desired service within said first menu display in response to user input;

characterized in that

f5. the first menu is generated from services including a broadcast video service from a remote broadcast source and

f5-1. a non-broadcast video service available from a local device; and

f6. acquiring said selected desired service using a database associating individual services and

corresponding menu items in said first menu display

with technical features used for acquiring a service from their respective remote and

f6-1. local sources."

III. The opposition was based upon the grounds of opposition under Article 100(a) EPC 1973 (novelty and inventive step) and relied on *inter alia* the following documents:

E1: EP 0 849 954 A2

E3: WO 96 41477 A1

E6: "Der Countdown läuft: Interaktives Fernsehen",  
Reinhard Wahren, RFE 2-94, pages 14 to 16.

IV. The reasons for the appealed decision stated *inter alia* that the subject-matter of granted claim 1 differed from the closest prior art (document E1) in features f5-1 and f6-1 (see above). The objective problem to be solved with regard to E1 was therefore considered to be improving the known navigation method so as to control different kinds of services including remote and local sources from a single menu. This was achieved according to features f5-1 and f6-1 by including non-broadcast services from a local source in the same menu. However E1 on page 9, lines 40 to 43, already mentioned the integration of services coming from different transmission paths. E3 related to another method for enabling navigation through user selected favourite multimedia services. According to page 11, line 35, to page 12, line 5, the components of the system for forming the navigation menu could comprise several devices, such as set-top boxes, VCR, PC, i.e. local sources. Thus when starting from E1 the skilled-person was already seeking to integrate different services coming from different paths. Moreover, when looking for an improvement of the system, the skilled person would have been aware that several local sources were available, as set out in E3, and could be integrated

into the navigation system known from E1. Hence the subject-matter of claim 1 was rendered obvious, Article 56 EPC 1973, by the combined consideration of E1 and E3.

V. In a statement of grounds of appeal the appellant requested that the decision be set aside and, as a main request, that claims 1 to 12 of the granted patent be maintained and the opposition rejected. Alternatively, the appellant requested that the decision under appeal be set aside and the patent maintained on the basis of an auxiliary request comprising claims 1 to 12 filed with the statement of grounds of appeal. The appellant also argued essentially that the subject-matter of granted claim 1 showed inventive step in the light of the combination of E1 and E3. E1 (page 9, lines 38 to 45) only mentioned broadcast services, rather than non-broadcast services, and therefore did not disclose services from different paths. Also E1 already provided a system for the integration of different services, so that there would be no incentive for the skilled person starting from E1 to seek to integrate further services. The appellant also disputed whether E1 disclosed a user creating favourites lists, arguing that in E1 the groups were merely determined according to data installed locally by the user, the data being provided to the user; see page 3, lines 49 to 52. E3 did not disclose or suggest local devices being included in a favourite channel list or that the components of the system for forming the navigation menu could comprise several devices.

VI. In a letter dated 2 August 2005 the appellant informed the EPO that it had changed its name from "Thomson

Licensing S.A." to "Thomson Licensing". The EPO subsequently issued a communication that the proprietor's name had been changed in the Register of European Patents, Rule 92(1)(f) EPC 1973, with effect on 6 August 2005. In a communication dated 18 November 2005 the registry of the board pointed out that both the notice of appeal and statement of grounds of appeal had been filed in the old name of the proprietor and asked when the change of name had taken effect. In a letter dated 16 December 2005 the appellant indicated that the change of name had taken effect on 1 July 2005, as set out in the letter dated 2 August 2005, and made a request for correction under Rule 88 EPC 1973, first sentence, of the proprietor's name in the notice and statement of grounds of appeal.

- VII. In a letter dated 31 August 2005 the respondent (opponent) stated that he did not intend to play an active part in the appeal proceedings and did not intend to make submissions or requests or take part in any oral proceedings. The respondent stated however that he wished to remain a party to the proceedings.
- VIII. In an annex to a summons to oral proceedings the board set out its provisional opinion on the appeal, stating *inter alia* that the error in referring to the old name of the appellant had not been detrimental to the admissibility of the appeal so that the appellant's request for correction was unnecessary. Regarding the main request, the board stated that, starting from E1, it seemed reasonable to want to extend the range of different broadcast sources dealt with by the decoder. It appeared that the desire to extend the range of different multimedia sources to be dealt with by a

navigation method for television users naturally arose from the convergence of television and other multimedia sources, such as the Internet, a trend which already seemed to exist at the priority date of the opposed patent; see E6, page 14, middle column. The added expression in claim 1 of the auxiliary request "wherein favorite multimedia services of the first set are individually selected by the user" seemed to add subject-matter, Article 123(2) EPC.

- IX. In a letter dated 18 May 2009 the respondent stated that he would not attend the oral proceedings.
  
- X. In a letter dated 30 July 2009 the appellant argued essentially that the subject-matter of granted claim 1 showed inventive step in view *inter alia* of the combination of E1 and E3, neither of these documents even suggesting including local devices in a programming guide. Regarding the disclosure of the added feature in claim 1 of the auxiliary request, the appellant referred to figure 7 and passages in the patent specification corresponding to page 9, line 23, to page 10, line 13, of the application as filed.
  
- XI. Oral proceedings were held before the board on 17 September 2009 in the absence of the respondent (as announced in advance), the board noting that the respondent had not submitted any substantive requests. The appellant filed a new set of claims 1 to 11. The appellant's final requests were that the decision under appeal be set aside and the patent maintained as granted (main request). Alternatively, the appellant requested that the decision under appeal be set aside and the patent maintained on the basis of an auxiliary

request comprising claims 1 to 11 filed in the oral proceedings.

Regarding the main request, the appellant argued in essence that it was important to distinguish between local and remote sources. Local sources did not broadcast, in the sense of transmitting to many receivers, a video service from a local device, examples being a VCR or DVD. There was no disclosure in E1 of such non-broadcast local sources. Remote sources were broadcast to many receivers. In the prior art the user of audio visual equipment first had to select a source of a video signal and then had to select from a list of favourites for each source. The invention simplified the selection procedure by including favourites from different sources in the same favourites list so that switching between sources occurred in the background. References in the patent to local area networks had to be understood as referring to networks within the home, meaning that local sources were within the home. The "local affiliate" mentioned in E1 was a "local source", but was not "non broadcast". The reason why not all local sources listed in the favourites menus in figures 3 and 4 of the patent indicated the content of the video service was that the local device might not be present or switched on.

As to the auxiliary request, the appellant argued that the request could not have been filed earlier in the appeal proceedings, since it was in reaction to the debate in the oral proceedings, in particular to the fact that in the debate the expression "local device" had been understood more broadly than before. The



amendments limited the first set of favourite multimedia services which could be defined by the user.

- XII. The claims according to the auxiliary request comprise claim 1 and dependent claims 2 to 11, claim 1 reading as follows (inserted text with respect to claim 1 of the former auxiliary request being indicated in **bold**, deletions being ~~struck through~~).

"A method for enabling navigation through user selected favorite multimedia services with an on-screen display interface system utilizing video program data received from a plurality of different sources comprising the steps of: generating a first menu display of a first set of favorite multimedia services comprising a subset of available services; selecting a desired service within said first menu display in response to user input; characterized in that the first menu is generated from services including a broadcast video service from a remote broadcast source and a non-broadcast video service available from a local device; and acquiring said selected desired service using a database associating individual services and corresponding menu items in said first menu display with technical features used for acquiring a service from their respective remote and local sources, and wherein ~~favourite multimedia services~~ **non broadcast video services available from a local device** of the first set are individually selected by the user."

- XIII. At the end of the oral proceedings the board announced its decision.

## Reasons for the Decision

### 1. *Admissibility*

The appeal is admissible

### 2. *The appellant's main request*

#### 2.1 *Document E1*

E1 forms the closest prior art. It concerns a method of grouping a plurality of broadcast programming services provided via differing transmission paths, figure 1 showing the transmission paths of cable broadcast, terrestrial broadcast and satellite broadcast. Services can be grouped together into a virtual channel of services from the same service provider. For instance, table 2 shows a virtual channel designated as "10" which groups together channels 10, 111, 112 and 113 from the same service provider "ABC"; see page 4. By pressing the channel up/down buttons on a remote control the viewer can switch between different channels of the same virtual group in a seamless manner irrespective of the different transmission paths; see page 3, lines 36 to 39, and page 8, lines 29 to 30. Whilst E1 gives as examples of transmission paths a direct broadcast satellite path, a cable distribution path, a terrestrial broadcast path and a multi-point microwave distribution system path (see page 3, lines 27 to 29), E1 also states that "The invention is compatible with virtually any type of programming service, including television, information services such as stock prices and weather data, and audio/video

programming implemented in software including games and other programming"; see page 9, lines 46 to 48.

As to how the groups are defined, E1 states that "Moreover, the groups along with the sequencing mode may be determined according to data which is carried with the broadcast programming services, via a separate communication path such as a telephone line, or installed locally such as via a smart card or **user input**" (emphasis added by the board); see page 6, lines 10 to 12. The appellant has argued that the reference to "user input" means that the groups are determined according to data which is provided to the user and is then installed locally by the user, citing E1, page 3, lines 50 to 52, which states that "The grouping criteria will generally be determined according to data transmitted with the programming services or provided to a decoder via an alternate route such as a smart card or telephone line." The board does not accept this interpretation of E1. The above citation on page 6 of E1 sets out four different ways of defining the program groups: broadcast programming services, a separate communication path such as a telephone line, local installation via a smart card or local installation via user input. The second above citation from page 3 of E1 only mentions three of the four ways, making no mention of user input. The board can find no basis in E1 to support the proposition that the user slavishly enters group data provided to him/her. Indeed it is more reasonable to assume that "user input" means that the user can define the groups as he/she wishes.

2.2 *Novelty, Article 54(1) EPC 1973*

The board sees no technical difference between the "user selected favorite multimedia services" set out in claim 1 (feature "f1" above) and the user defined service groups in E1. Moreover the cable drop, antenna and satellite dish shown in figure 1 of E1 fall within the term "local device" used in claim 1 (feature "f5-1"). However the board interprets the corresponding services provided via the transmission paths known from E1 (see figure 1) - cable plant broadcast, terrestrial broadcast and satellite broadcast - in the same way as argued by the appellant, namely that these are broadcast video services and thus not local sources making non-broadcast services available (see features "f5-1" and "f6-1" above).

Hence E1 discloses a method for enabling navigation (see title) through user selected favourite multimedia services (see page 6, lines 10 to 12) with an on-screen display interface system utilizing video program data received from a plurality of different sources (see figure 1) comprising the steps of: generating a first menu display of a first set of favourite multimedia services comprising a sub-set of available services (see table 2); selecting a desired service within said first menu display in response to user input (see page 9, lines 38 to 40); in which the first menu is generated from services including a broadcast video service from a remote broadcast source (see page 6, lines 19 to 23) and acquiring said selected desired service using a database associating individual services and corresponding menu items in said first menu display with technical features used for acquiring

a service from their respective remote sources (see page 7, lines 10 to 14).

Thus the board agrees in substance with the finding in the appealed decision that the subject-matter of claim 1 differs from the disclosure of E1 in the first menu being generated from services also including a non-broadcast video service available from a local device and said database also associating individual services and corresponding menu items in said first menu display with technical features used for acquiring a service from a respective local source.

The subject-matter of granted claim 1 is consequently new, Article 54(1) EPC 1973.

### 2.3 *The common general knowledge*

According to the review article E6 (page 14, middle column), at the priority date of the opposed patent a trend already existed to extend the range of different multimedia sources to be dealt with by a navigation method for television users. This trend arose from the convergence of television and other multimedia sources, such as the Internet, indeed paragraph [0002] (lines 13 to 22) of the published patent refers generally to prior art home entertainment systems receiving data not only from remote sources such as broadcasting satellites but also local sources such as a DVD. The trend is confirmed by E3, which discloses an improvement of prior art electronic guide systems not linking the user to other information systems (see page 2, lines 21 to 24) by integrating electronic program applications within the electronic program

guide environment, rather than simply passing control to another service (page 55, lines 16 to 25).

2.4 *Inventive step, Article 56 EPC 1973*

The objective technical problem starting from E1 is seen as extending the range of video services covered by the method. In the light of the common general knowledge discussed above, this problem was known in the prior art. According to claim 1, the problem is solved by also including in the first menu a non-broadcast video service available from a local device (such as a VCR, DVD or camcorder; see figures 3 and 4) and including in the database the information required for acquiring said video service.

The provision in E1 of a virtual channel which integrates different transmission paths in a seamless manner using a database associating individual services and corresponding menu items would have made it possible to include other sources, including local sources, of interest to the user of a home entertainment system; see table 2 and page 8, lines 29 to 30. In implementing this approach the skilled person would have added a non-broadcast video service available from a local device to table 2 and made a consequential adaptation of the database (see page 7, lines 10 to 14) to acquire the service from the local device as matters of usual design. Connection of such local devices, such as a VCR, DVD or camcorder, to make a local video source available to a television set or the like was conventionally made via a source switch on a remote controller. In view of the existing trend towards integration of services and devices (see E1 and

E6) and even electronic program applications into an electronic program guide environment (see E3), extending the range of video services constituted a straightforward extension of the teaching of E1. This is further confirmed by the fact that the opposed patent does not disclose any specific technical means which would have to be provided or adapted in order to achieve this objective. The alleged advantage of simplifying the selection procedure by including favourites from local sources thus directly results from the straightforward extension of a known method. Starting from E1, the skilled person would consequently have arrived at the subject-matter of granted claim 1 without inventive step.

The subject-matter of granted claim 1 is thus not considered to involve an inventive step, Article 56 EPC 1973.

3. *The admissibility of the appellant's auxiliary request*

Under Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal of the EPO; see OJ EPO 2007, 536) any amendment to a party's case after it has filed its grounds of appeal or reply 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.

The appellant has argued that the auxiliary request could not have been filed earlier in the appeal proceedings, since it was in reaction to the debate in the oral proceedings. The board is not convinced by

this argument. The amendments relate to a feature which was already present in claim 1 of the auxiliary request submitted with the statement of grounds of appeal. This feature was objected to in the board's communication as an unallowable amendment (Article 123(2) EPC; see point VIII above). No amendments of the claims were filed within the time limit set by the board. By amending the claims in the oral proceedings and specifying that "non broadcast video services available from a local device" are individually selected by the user a new issue was raised for the first time in the oral proceedings, namely which kind of services are available and individually selectable from the local devices, such as VCR, DVD or camcorder. These devices are merely shown as devices in the favourite lists of figures 3 and 4. The appellant did not indicate from which part of the application as filed this amended feature could be directly and unambiguously derived.

Consequently the board did not admit the appellant's auxiliary request.

4. *Conclusion*

The appellant's main request is not allowable and his auxiliary request was not admitted into the proceedings.



**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

L. Fernández Gómez

F. Edlinger