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Datasheet for the decision
of 13 May 2009

Case Number: T 1169/05 - 3.5.04

Application Number: 95944478.7

Publication Number: 0801865

IPC: H04N 5/445

Language of the proceedings: EN

Title of invention:
Method for channel scanning by theme

Patentee:
Gemstar Development Corporation

Opponent:
IGR GmbH & Co. KG

Headword:
-

Relevant legal provisions:
-

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Inventive step - yes"

Decisions cited:
-

Catchword:
-

Case Number: T 1169/05 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 13 May 2009

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 04 July 2005 revoking European patent No. 0801865 pursuant to Article 102(1) EPC 1973.**

Composition of the Board:

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

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Summary of Facts and Submissions

I.   This is an appeal by the proprietor against the
        decision by the opposition division revoking European
        patent 0 801 865.

II.   The patent was opposed on the ground of opposition
        under Article 100(a) EPC 1973 (inventive step). During
        the course of opposition proceedings sets of amended
        claims were filed with letters dated 2 September 2004
        and 11 February 2005.

III.   Granted claim 1 reads as follows, the board having
        added labels (V1) to (V9) corresponding to the
        labelling of the features introduced in the opponent's
        letter dated 8 April 2004:

        "A method for surfing a spectrum of television channels
        comprising the steps of:

        (V1) storing in a memory (104) a first group of
        channels and time periods of the day when individual
        channels of the first group are enabled for viewing;

        (V2) retrieving from said memory (104) channels in the
        first group of channels which are currently enabled
        based on a current time period of the day;

        (V3) tuning a television receiver to a given channel;

        (V4) displaying on a television screen a foreground
        field (222) and a background field (224);

(V5) inserting the program being telecast on the given channel in one of the fields (222, 224);

(V6) sequentially inserting (244) programs telecast on the retrieved channels in the other field (224, 222);

(V7) generating (248) a channel sequencing command signal, whereby a program is inserted in the other field each time the channel sequencing command signal is generated;

(V8) generating (246, 250) a full screen command signal by pressing a key; and

(V9) displaying (254) on the screen (224) in full screen format the program being telecast on the other channel when the full screen command signal is generated; [sic]".

Claims 2 to 15 are dependent on claim 1.

IV.   According to the reasons for the appealed decision, the subject-matter of granted claim 1 differed from the closest prior art document

D5:   US 5 251 034 A

in that the step of "storing in a memory a first group of channels **and time periods of the day when individual channels of the first group are enabled for viewing**" (feature V1), was only partially known from D5. Starting from D5 and faced with the problem of scanning through an ever increasing number of channels, the skilled person would have introduced some process of

preselection, for instance by grouping the channels by
theme, as was already known from EPG systems such as
the ones disclosed in D1 or D2, thus arriving at the
subject-matter of granted claim 1, these documents
being

D1:   DE 42 01 031 C2 and
D2:   WO 94 14282 A1.

Hence the subject-matter of granted claim 1 did not
involve an inventive step, Article 56 EPC 1973, in view
of the combination of D5 with either D1 or D2.

Regarding D5, the reasons for the decision stated
essentially that feature V2 of granted claim 1 was
known from D5. It was self-evident that all viewable
channels (A to D) had been stored in the preset memory
when running the auto-tuning function of the TV set and,
since the retrieval of the channels from the memory
depended on the channel that was currently viewed when
the scan key was pressed (see figures 3A to 3C: if B
was currently viewed, only A, C and D were retrieved
for being sequentially displayed in the PIP window),
some kind of "enabling" depending on the "current time
period of the day" did literally take place. Feature V9
of granted claim 1 was also known from D5; it appeared
to be a fair understanding of D5 that the channel
viewed last in the PIP window would appear in full
screen format when the scan key was pressed for the
second time. The word "redisplay" was used in D5 only
in connection with the embodiment relating to entering
the PIP function from the VCR mode (see column 3,
line 15), the remaining text only mentioning the
displaying of a specific channel (see line 10 of the

abstract and column 1, lines 58 to 60) and the purpose of selecting a TV channel (see column 1, lines 16 and 19).

As to D1 and D2, the reasons for the decision stated essentially that features V1 and V2 were anticipated by EPG systems such as the ones known from D1 or D2. Indeed, a particular program suggested and stored by a conventional EPG corresponded to a channel in association with a predetermined time period (start time; end time) during which said channel was "enabled", i.e. said program was being broadcast.

V.   With a statement of grounds of appeal the appellant filed a further amended claim 1 and requested that the decision be set aside and the patent maintained as granted (main request). As first and second auxiliary requests the appellant requested that the patent be maintained in amended form on the basis of the claims filed with the letters dated 2 September 2004 and 11 February 2005, respectively. As a third auxiliary request the appellant requested that the patent be maintained in amended form on the basis of the claims filed with the statement of grounds of appeal. Oral proceedings were requested if the board intended to do anything other than maintain the patent as granted.

Regarding the main request, the appellant argued essentially that none of the cited prior art documents remotely suggested enabling a channel selection for a PIP window based on time of day (feature V1). Moreover, the appealed decision was wrong in its finding that D5 disclosed feature V2, since D5 had no regard for time. Indeed, depending on the time of day, D5 would show

blank screens for channels that were not transmitting
viewable content. The appellant also challenged the
finding in the appealed decision that D5 disclosed
feature V9, since column 3, lines 7 to 17, and figure
2B of D5 showed that the system reverted to the video
tape output when the scan key was pressed for a second
time. The same was true for the system in the TV mode
(see column 3, lines 26 to 34). The flowchart in
figure 2B merely showed channel scanning stopping when
the scan key was pressed. The combination of D5 with
either D1 or D2 required hindsight, since neither
contemplated storing a first group of channels enabled
according to the time of day. Moreover neither D5 nor
D1 nor D2 disclosed sequentially inserting programs
telecast on retrieved channels in a PIP window. All
that D1 or D2 would add to D5 would be to sequentially
tune to all channels in the program guide list, which
was no more than D5 did already in showing channels B,
C and D in a PIP window when channel A was being viewed.

The appellant also referred to the document (D2A)
WO 94 14284 which was related to D2. D2A was directed
to an EPG and unlike D2, which did not mention themes,
did describe themes, referred to in the appealed
decision, and yet did not show or suggest storing in a
memory a first group of channels and time periods.

VI.   The respondent (opponent) requested that the appeal be
dismissed. The respondent also argued essentially that
feature V9 of granted claim 1 was directly derivable
from the mention in D5 (column 1, lines 6 to 15) of
"selecting" a desired broadcasting channel, the term
"selecting" implying switching to the desired channel.
D5 sought to avoid the need to use a number key pad or

channel up/down keys to select a channel by the use
instead of the "scan" key and a PIP window. If the scan
key was operated again, then a "specific" channel was
displayed on the main screen, it being obvious that the
"specific" channel was that selected using the PIP
function.

Moreover feature V1 in its entirety was known from D1
and D2, which both disclosed conventional EPG systems
in which a preselection was made from a large number of
available channels. The preselection could be made on
the basis of content, time or channel; see D1, column 4,
lines 14 to 25. Feature V2 was known from D1, since it
disclosed the storage of channels and times for which
they were enabled. This included preselected programs
on channels which were currently viewable; see column 4,
lines 18 to 19.

By carrying out the automatic selection of channels
known from D5 in an EPG system of the sort known from
either D1 or D2 the skilled person would arrive at the
subject-matter of granted claim 1.

VII.   In a letter dated 26 October 2006 the appellant
       informed the board that it had changed its name and
       filed a copy of the corresponding extract from the
       German commercial register.

VIII. In a letter dated 12 April 2007 the respondent withdrew
       the opposition.

IX.   The board issued a summons to oral proceedings, but
       subsequently cancelled the oral proceedings scheduled

to take place on 30 July 2009 by a registered letter
with advice of delivery dated 7 May 2009.

Reasons for the Decision

1.   *Admissibility of the appeal*

      The appeal is admissible.

2.   *The meaning of the expression in granted claim 1
      "enabled"*

      Feature V1 of granted claim 1 refers to storing
      "channels and time periods of the day" when certain
      television channels are "enabled for viewing". Feature
      V2 refers to retrieving channels which are "currently
      enabled" based on a current time period of the day, and
      feature V6 refers to inserting "the retrieved channels
      in the other field" (foreground or background; see
      features V4 and V5). Therefore, in the context of
      claim 1 as a whole, television channels being "enabled
      for viewing" means that they are included in the cycle
      of retrieved channels shown in the other field (for
      instance a PIP window) on the television when the
      channels are sequentially inserted by generation of a
      channel sequencing command signal (feature V7), a
      particular channel only being included in the cycle if
      the current time of day falls within user-defined time
      periods stored together with the channels of the first
      group in the memory.

      According to the appealed decision, a channel is
      essentially "enabled" if a program is being currently

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broadcast on it; see reasons, page 4, paragraphs 4 and
5.

This interpretation does not take due account of the
meaning of the term when set in the proper context of
what is stored in the memory and what is retrieved from
the memory. As set out above, the invention is
concerned with a selection of channels dependent on
(user-defined) periods of the day. This is fully
supported by the patent description. According to
paragraph [0017], the invention provides a method for
surfing a spectrum of television channels which
simplifies the finding and displaying of a desired
channel. As explained in paragraphs [0024] to [0030]
and illustrated in figure 2, the remote controller has
a plurality of "theme" keys, including a key for the
theme "News". The user stores channels under each theme
key, paragraph [0030] describing the storing of the
"NBC" channel under the "News" theme in the theme
memory together with "times for which the channel is
enabled". In the case set out in paragraph [0030],
three time ranges are defined by the user which are
used to enable the NBC channel only at these times. At
other times the NBC channel is skipped over. The reason
for this is given in paragraph [0029], namely that the
user knows that during the defined time ranges the NBC
channel shows news. According to paragraph [0034], the
user can view channels under a particular theme by
pressing the theme key, causing the remote controller
to transmit signals to the television causing it to
cycle through the channels stored under that theme key
in a PIP window, allowing the user to select a channel.
As paragraph [0035] explains, "This system enables the
user to eliminate channels that are not of interest

when deciding upon a program to watch." Hence the board
disagrees with the interpretation of the term "enabled"
as set out in the appealed decision.

3.   *Document D5*

D5 concerns a system which allows a television viewer
to watch a cassette tape from a VCR (in "VCR mode") or
a TV channel from a tuner (in "TV mode") and to
simultaneously search alternative TV channels using a
PIP window superimposed on the main screen of the
monitor, the objective being to "facilitate the channel
selection"; see column 1, lines 42 to 50. The selection
is facilitated by providing an automatic sequential
display in a PIP window when a scan key is pressed
until it is stopped in response to another press of the
scan key; see claims 1 and 2. This approach avoids the
inconvenience of using a ten-key pad or channel up/down
keys to select TV channels.

Taking the VCR mode first (see column 2, line 57, to
column 3, line 17, and figures 2A and 2B), when the
scan key is pressed (see figure 2A, step 106) the video
signal from the VCR is displayed on the main screen of
the monitor and preprogrammed TV broadcasting channels
A, B and C, etc. are continuously displayed in turn for
a predetermined time in a PIP window superimposed on
the main screen. Pressing the scan key again stops the
display of the PIP window and the VCR signal is
redisplayed on the monitor (see figure 2B, step 109,
and column 3, lines 12 to 17).

Turning to the TV mode (see column 3, lines 18 to 51,
and figures 2A and 2B) in which the user is viewing TV

channel A, when the scan key is pressed (see figure 2A, step 113) the main screen of the monitor shows TV channel A and a superimposed PIP window displays TV channels B and C, etc. continuously in turn for a predetermined time. Pressing the scan key again (see figure 2B; step 116) stops the channel search; see column 3, lines 31 to 34.

The reasons for the appealed decision (page 4, 3rd and 4th paragraphs) state (relating to feature V2 of granted claim 1) essentially that it is self-evident in D5 that the preprogrammed TV channels (A, B, C, etc.) are stored when running an auto-tuning function of the TV set. It is also argued that, since, when watching channel A in the TV mode, only the remaining channels are displayed in the PIP window, "Some kind of 'enabling' depending on the 'current time period of the day' does literally take place". The board does not regard either assertion as sustainable. The fact that the currently viewed channel is not shown in the PIP window does not imply an enabling of the channels displayed in the PIP window in dependence upon the current time period of the day, nor does this follow from the implementation of an auto-tuning function in D5. In the board's view an enabling of channels depending on the current time period of the day is not directly and unambiguously derivable from D5. Rather, the board shares the appellant's view that D5 has no regard for time concerning the retrieved channels of the first group.

Before the opposition was withdrawn the respondent relied on the argument (relating to feature V9 of granted claim 1) set out in the appealed decision

(reasons, page 4, 2nd paragraph) that references in D5
to selecting channels (see, for example, column 1,
lines 7 to 15) and, in the TV mode, displaying a
"specific" channel if the scan key was pressed again
(see column 1, lines 51 to 60) meant that the channel
last shown in the TV mode in the PIP window would be
selected and thus subsequently displayed on the main
screen of the monitor when the scan key was pressed
again. In the board's view, this interpretation is not
consistent with the fact that in figure 2B no action
follows the second pressing of the scan key. The
channel search performed by the PIP function is merely
stopped, the board understanding this to mean that the
PIP window is closed. Hence the board finds that it is
not directly and unambiguously derivable from D5 that
the channel last shown in the TV mode in the PIP window
when the scan key was pressed again would be selected
and thus subsequently displayed on the main screen of
the monitor.

Hence the subject-matter of granted claim 1 differs
from the disclosure of D5 in the following features:

(V1) storing in a memory a first group of channels and
time periods of the day when individual channels of the
first group are enabled for viewing;
(V2) retrieving from said memory channels in the first
group of channels which are currently enabled based on
a current time period of the day and
(V9) displaying on the screen in full screen format the
program being telecast on the other channel when the
full screen command signal is generated.

The board has chosen not to follow the splitting of
feature V1 used in the appealed decision, as this would
lead to a somewhat artificial understanding of claim 1.
The data stored in the memory relates not only to a
first group of channels (which is known from D5) but
also to time periods of the day when individual
channels of the first group are enabled for viewing
(which is not known from D5).

4.   *Documents D1 and D2*

D1 concerns a system having an EPG for reducing the
time spent searching for a radio or television program
of interest. To this end the user enters information on
his/her interests which the system compares with coded
information broadcast with the programs; see column 3,
lines 55 to 60. The system automatically presents
preselections of programs in groups based, for instance,
on content, time and channel, see column 4, lines 14 to
25.

D2 relates to a set top terminal for cable television
having an EPG which provides an on-screen menu tree
(see figures 9a and 14) for the user to select programs
including "major menus" covering different categories
of programs, for instance "Sports".

It is stated in the appealed decision (page 4, 5th
paragraph) that features V1 and V2 of granted claim 1
are known from D1 and D2, the same arguments being made
by the respondent before withdrawing the opposition.

The board does not accept these arguments, since
neither D1 nor D2 discloses the retrieving of channels

which are enabled based on stored time periods of the day and the current time period of the day. In particular, D1 essentially concerns the selection of programs rather than the selection of channels, there being no suggestion that programs meeting the user interest criteria would only be included in a preselection at certain broadcast times.

5.   *Main request: inventive step, Article 56 EPC 1973*

D5 forms the closest prior art, the subject-matter of claim 1 differing from the disclosure of D5 in features V1, V2 and V9, as set out in section 3 above.

The difference features have the effect that, depending on stored time periods of the day, only channels which the user decides to assign to a group of channels for sequential display (for instance those the user knows currently have content relevant to a particular theme) are sequentially displayed for selection by a key in a foreground or background field (for instance shown in a PIP window when the corresponding theme key is pressed on the remote control).

The objective technical problem is seen as that derivable from paragraph [0017] of the patent description, namely to provide a method for surfing a spectrum of television channels which simplifies the finding and displaying of a desired channel.

None of the difference features is known from, or suggested by, D1, D2 (or D2A, cited by the appellant), so that the subject-matter of granted claim 1 would not

have been obvious to a person skilled in the art, even
if D5 had been combined with any one of these documents.

The board concludes that the subject-matter of granted
claim 1 involves an inventive step, Article 56 EPC 1973.

6.   *The first, second and third auxiliary requests*

Since the ground for opposition under Article 100(a)
EPC 1973 does not prejudice the maintenance of the
European patent, the appellant's main request is
allowable, and the appellant's first, second and third
auxiliary requests need not be considered further. In
these circumstances oral proceedings were not necessary
and were therefore cancelled.

Order

For these reasons it is decided that:

1.   The decision is set aside.
2.   The patent is maintained unamended.

The Registrar: The Chairman:

P. Cremona   F. Edlinger

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