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Datasheet for the decision of 24 November 2009

Case Number: T 1415/05 - 3.5.04

Application Number: 02003372.6

Publication Number: 1233414

IPC: G11B 20/00

Language of the proceedings: EN

Title of invention:
Data nullification device for nullifying digital content recorded on a recording medium

Applicant:
Panasonic Corporation

Opponent:
-

Headword:
-

Relevant legal provisions:
RPBA Art. 13(1)

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

Keyword:
"Main request - inventive step (no)"
"Auxiliary requests - not admitted"

Decisions cited:
-

Catchword:
-

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Case Number: T 1415/05 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 24 November 2009

Appellant: Panasonic Corporation
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 23 June 2005 refusing European application No. 02003372.6 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: F. Edlinger
Members: M. Paci
C. Vallet

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division refusing European patent application No. 02 003 372.6, which was published as EP 1 233 414 A2.

II. The following documents, cited as prior art in the decision under appeal, are relevant to the present decision:

D1: WO 99/46933 A1
D1': US 6 694 022 B1
D3: WO 99/33265 A1

III. The decision under appeal was based on the ground that the subject-matter of claims 1 and 29 then on file lacked novelty (Article 54(1) and (2) EPC 1973) in view of D1. The examining division had also indicated in the written decision under the heading "Additional Comments" that the subject-matter of dependent claims 2 to 12, 22 to 27 and 30 to 35 lacked either novelty or inventive step for reasons set out in an earlier communication dated 19 October 2004.

IV. With the statement of grounds of appeal the appellant (applicant) filed a new set of claims according to a main request on which the appeal proceedings were to be based.

V. In a communication sent in preparation for the oral proceedings the board noted that claim 1 was based on previous claim 3 (dependent on claim 1) relating to a combination which the examining division, in their

"Additional Comments", had held to lack an inventive step in view of D1 and D3. The board indicated that it was inclined to share the examining division's conclusion.

VI. With a letter dated 23 October 2009 the appellant filed three new sets of claims according to a main request, auxiliary request I and auxiliary request II, respectively.

VII. Oral proceedings were held on 24 November 2009.

VIII. The appellant's final requests are that the decision under appeal be set aside and that a patent be granted on the basis of the main request comprising the set of claims filed with the statement of grounds of appeal, alternatively on the basis of a first, second and third auxiliary request comprising the claims which were filed as "main request", "auxiliary request I" and "auxiliary request II", respectively, with the letter of 23 October 2009.

IX. Independent claim 1 according to the main request reads as follows:

"A data nullification device for nullifying target data recorded on a recording medium, the target data being made up of a plurality of data blocks, the data nullification device comprising:
a judging unit (111) operable to judge, for each data block recorded on the recording medium, whether the data block needs to be nullified; and

a receiving unit (102) operable to receive continuously transmitted data from an external device, and setting the received data as a new data block;
characterised by
a nullifying unit (113,114) operable to write the new data block to a recording area on the recording medium that stores a data block which is judged as needing to be nullified, to nullify the recorded data block and at the same time record the new data block, when a predetermined number of data blocks are judged as needing to be nullified or when one or more data blocks whose total amount of data reaches a predetermined amount are judged as needing to be nullified."

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

"A data nullification device for nullifying target data recorded on a recording medium, the target data being made up of a plurality of data blocks, the data nullification device comprising:
a utilizing unit (110) operable to utilize the target data recorded on the recording medium for each data block, and
a judging unit (111) operable to judge for each data block recorded on the recording medium, when the utilizing unit (110) utilizes the target data, whether the data block needs to be nullified;
characterised by
a processing capacity judging unit (112) operable to judge whether the device (100) has enough processing capacity to destroy all parts of the data block which is judged as needing to be nullified, and

a nullifying unit (113) operable to destroy, when a predetermined number of data blocks are judged as needing to be nullified or when one or more data blocks whose total amount of data reaches a predetermined amount are judged as needing to be nullified, all of the data blocks, if the processing capacity judging unit (112) judges affirmatively, or, if the processing capacity judging unit (112) judges negatively, to destroy only an important part of the data blocks."

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

"A data nullification device for nullifying target data recorded on a recording medium, the target data being made up of a plurality of data blocks, the data nullification device comprising:
a utilizing unit (110) operable to utilize the target data recorded on the recording medium for each data block, and
a judging unit (111) operable to judge for each data block recorded on the recording medium, when the utilizing unit (110) utilizes the target data, whether the data block needs to be nullified;
characterised by
a processing capacity judging unit (112) operable to judge whether the device (100) has enough processing capacity to destroy all parts of a pair of encrypted data block and encrypted decryption key which is judged as needing to be nullified, and
a nullifying unit (113) operable to destroy, when a predetermined number of data blocks are judged as needing to be nullified or when one or more data blocks whose total amount of data reaches a predetermined

amount are judged as needing to be nullified, all of the pair of encrypted data block and encrypted decryption key, if the processing capacity judging unit (112) judges affirmatively, or, if the processing capacity judging unit (112) judges negatively, to destroy only an important part of the pair."

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

"A data nullification device for nullifying target data recorded on a recording medium, the target data being made up of a plurality of data blocks, the data nullification device comprising:
a judging unit (111) operable to judge, for each data block recorded on the recording medium, whether the data block needs to be nullified;
a receiving unit (102) operable to receive continuously transmitted data from an external device, and setting the received data as a new data block; and
a nullifying unit (113,114) operable to write the new data block to a recording area on the recording medium that stores a data block which is judged as needing to be nullified, to nullify the recorded data block and at the same time record the new data block, when one or more data blocks whose total amount of data reaches a predetermined amount are judged as needing to be nullified,
characterized in that
the total amount of data of the one or more data blocks is a reproduction time period of the one or more data blocks, and
the predetermined amount is 90 minutes."

XIII. The examining division's reasoning in the decision under appeal with respect to claim 1 then on file can be summarised as follows.

D1, in Japanese, belongs to the prior art within the meaning of Article 54(2) EPC. Its patent family member D1', in English, was published after the date of priority of the present application. However it is clear that the teachings of D1' reflect the teachings of D1, since D1' is based on the same priority document as D1. Furthermore the figures of D1' and D1 are identical. Finally, the English abstract of D1 also indicates that the content of D1' is identical to that of D1.

D1 discloses a data nullification device ("digital broadcasting receiver 11") comprising a "simultaneous erasing pointer control circuit 21" and a "hard disk interface 22", as depicted in figure 1 and as described from column 4, line 32, to column 7, line 37) for nullifying target data ("program data 31" in figure 2) recorded on a recording medium ("hard disk 23" in figure 1), the target data being made up of a plurality of data blocks ("packets", as described on column 5, lines 27 to 37), the data nullification device comprising:

- a judging unit ("descrambler 18" in figure 1) operable to judge, for each data block recorded on the recording medium, whether the data block needs to be nullified (as described on column 6, lines 24 to 57, the descrambler judges the copy flag included in each packet header, and then decides if the packet needs to be erased after reproduction); and

– a nullifying unit ("simultaneous erasing pointer control circuit 21" in figure 1) operable to nullify, when a predetermined number of data blocks are judged as needing to be nullified (the condition being met if one copy-protected packet has been reproduced, as described on column 6, lines 41 to 57) or when one or more data blocks whose total amount of data reaches a predetermined amount are judged as needing to be nullified, the judged data blocks (as described on column 6, lines 41 to 57, nullification is implemented by writing zeros over the entire data of a packet).

Hence the device of claim 1 is known from D1.

Concerning claim 3 then on file, which had essentially the same subject-matter as claim 1 according to the present main request, the examining division, in its "Additional Comments", referred to the following reasoning in the official communication of 19 October 2004.

Claim 3 is dependent on claim 1.

D1 represents the closest prior art for the subject-matter of claim 3.

The following additional features of claim 3 are known from D1:

– the target data is data which is continuously transmitted from an external device and recorded on the recording medium (digital broadcasting information which is received by a tuner unit and

stored in an information storage unit, as disclosed from column 2, line 54, to column 3, line 14),

- the data nullification device further comprises a receiving unit operable to receive data from the external device (“tuner 12” in figure 1), and
- having set the received data as a new data block, the nullifying unit writes the new data block to a recording area on the recording medium (steps S4 and S5 of the flowchart depicted in figure 3).

The subject-matter of claim 3 thus differs from what is disclosed in D1 in that the new data block is written to a recording area that stores a data block which is judged as needing to be nullified, to nullify the recorded data block and at the same time record the new data block.

The problem to be solved by the present invention may therefore be regarded as to improve the apparatus disclosed in D1 so that the workload of nullifying the target data can be reduced.

When facing this problem, the person skilled in the art would notice that D1 encourages the reader to use alternative methods for erasing the stored target data (see column 7, lines 29 to 32, of D1’). The person skilled in the art would therefore search for related documents and find D3.

D3 discloses in the same context (time-shift recording of video data) a method of storing the target data in a circular buffer (figure 4 and page 4, line 36, to page 6, line 4). The recording medium contains a plurality of data blocks (stored in files 001 to 009,

as depicted in figure 4). When new data blocks are received they replace older blocks which have previously been stored on the recording medium (page 5, lines 6 to 19). In consequence the older blocks are deleted (Step 506 of the flowchart depicted in figure 5, as described on page 5, lines 20 to 25).

The person skilled in the art would recognise that the teaching of D3 provides a solution to the technical problem. By recording new target data onto storage areas which previously contained old target data, the old target data can be nullified without incurring additional workload. The person skilled in the art would therefore combine D1 and D3, thereby arriving at the subject-matter of claim 3 without any inventive activity.

The subject-matter of claim 3 is therefore not inventive in the sense of Article 56 EPC 1973.

XIV. The appellant essentially argued as follows with respect to claim 1 according to the main request.

Inventive step

D1 (D1'), considered by the examining division to be the closest prior art, discloses a digital broadcasting receiver allowing time-shifted reproduction of copyright protected video data. The data are received by a tuner 12. The received data can be stored by means of a hard disk interface 22 on a hard disk 23. The recording position for writing the received data on the hard disk is determined by a recording pointer (RP) control 19. When the recorded data are reproduced the

hard disk interface (22) reads the data based on a position indicated by a reproduction pointer (PP) control 20. Additionally, the reproduction pointer is forwarded to a simultaneous erasing pointer (EP) control 21. If the reproduced data are copyright protected, the data indicated by the erasing pointer have to be deleted. For this purpose the hard disk interface 22 overwrites the respective area on the hard disk with "0" by an additional writing operation (see column 6, lines 24 to 65).

The data nullification device of claim 1 differs from D1 by the feature of combining the recording of the newly received data and the nullification of the already reproduced data in a single writing operation.

The objective technical problem is therefore to reduce the processing capacity needed for erasing copyright protected data.

In the receiver of D1 the recording of new data and the erasing of old data are performed in two separate steps at different positions indicated by the recording pointer (RP) and the erasing pointer (EP), respectively. There is no suggestion in D1 to overwrite the old data with new data.

Hence the device of claim 1 involves an inventive step over D1.

D3 discloses a method of providing a time-shifted video stream. Received data are recorded in a storage unit and reproduced at a later time. In order to reduce the amount of memory required the storage unit is used as a

circular buffer (see figure 4). When the recording of the received video data reaches the end of the circular buffer the recording continues at the beginning of the buffer where it overwrites previously recorded data. In order to carry out a time-shift reproduction it is possible to read the recorded data until the respective memory area is overwritten by a successive recording cycle.

D3 discloses neither copyright protection nor limiting the number of times the data can be accessed. D3 also does not mention the problem of reducing the processing capacity needed for erasing old data, in particular copyright protected data.

The skilled person would therefore have had no reason to take D3 into account and to combine its teaching with that of D1.

Assuming that D3 was nevertheless considered, the skilled person would still not have arrived at the device of claim 1 for the following reasons.

There is no suggestion in D3 to control the nullification of the recorded data. In particular, it is not possible to select a particular recording area for nullification or to nullify (overwrite) the recorded data at a time before the next writing cycle.

In contrast to this, the present invention teaches to select a particular area of the recording medium which is to be deleted. Based on this selection, the respective recording area is overwritten by newly received data. Thus it is possible to erase the data on

the recording medium immediately after the data are reproduced and determined to be nullified. Furthermore the time delay for a time-shifted reproduction according to the present invention is not limited to the size of a circular buffer.

In the device of claim 1 the new data block is written on an (old) data block which is judged by a judging unit as needing to be nullified. In D3 the overwriting of new data on old data is not based on such a judgement.

Hence the device of claim 1 also involves an inventive step in view of the combination of D1 and D3.

Admissibility of the first and second auxiliary requests

The independent claims according to these two requests have been amended with the objective of making them clearly allowable. Since these claims have been obtained by combining the subject-matter of independent and dependent claims examined by the examining division in its detailed communication dated 19 October 2004, the board should be able to examine the claimed subject-matter without undue burden. Moreover, if necessary, the board can decide to remit the case to the department of first instance for further examination.

The board should therefore admit the first and second auxiliary requests into the proceedings.

Admissibility of the third auxiliary request

Claim 1 according to this request differs from claim 1 of the main request filed with the statement of grounds of appeal in that one of the two alternative conditions for nullifying data has been deleted and in that features taken from original claim 9 and the original description (see paragraph [0152] of the published application) have been added. Since the claimed subject-matter should be clearly allowable, the third auxiliary request should be admitted into the proceedings.

Reasons for the Decision

1. The appeal is admissible.

The main request

2. The subject-matter of claim 1 according to the main request is substantially the same as that of claim 3 (dependent on claim 1) of the set of claims on which the appealed decision was based.

3. Claim 1 - inventive step (Article 56 EPC 1973)

3.1 D1 and D1'

D1, an international patent application published before the priority date of the present application, is in Japanese. The examining division therefore also referred to D1' which is a US patent specification from the same patent family as D1 but published after the

filing date of the present application. The examining division considered that "*the teachings of D1' reflect the teachings of D1*" because D1 and D1' claim the same priority, have identical drawings and their respective English abstracts indicate that they have the same content. The appellant has not disputed this conclusion, neither before the examining division nor on appeal. Moreover D1 and D1' were filed by the same applicant as the present application, so their respective contents can be assumed to be well known to the appellant. In view of these facts, the board considers that there is sufficient evidence to regard the disclosure of D1' as reflecting the contents of D1, which is comprised in the state of the art according to Article 54(2) EPC 1973. Thus reference to the written disclosure of the prior art document D1 will be made by reference to D1'.

3.2 The closest prior art

The appellant has not disputed that D1 represents the closest prior art for the subject-matter of claim 1.

D1' discloses a data nullification device ("digital broadcasting receiver 11" comprising a "simultaneous erasing pointer control circuit 21" and a "hard disk interface 22", as depicted in figure 1 and as described from column 4, line 32, to column 7, line 37) for nullifying target data ("program data 31" in figure 2) recorded on a recording medium ("hard disk 23" in figure 1), the target data being made up of a plurality of data blocks ("packets", as described in column 5, lines 27 to 37), the data nullification device comprising:

- a judging unit ("descrambler 18" in figure 1) operable to judge, for each data block recorded on the recording medium, whether the data block needs to be nullified (as described in column 6, lines 24 to 57, the descrambler judges the copy flag included in each packet header, and then decides if the packet needs to be erased after reproduction);
- a receiving unit ("tuner 12" and "transport decoder 13" in figure 1) operable to receive continuously transmitted data from an external device (digital broadcasting information which is received by a tuner unit and stored in an information storage unit, i.e. the "hard disk 23" in figure 1, as disclosed from column 2, line 54, to column 3, line 14), and setting the received data as a new data block (see from column 5, line 27, to column 6, line 12, and figure 2); and
- a nullifying unit ("simultaneous erasing pointer control circuit 21" in figure 1) operable to write the new data block to a recording area on the recording medium and to nullify the recorded data block when a predetermined number of data blocks are judged as needing to be nullified (the condition being met if one copy-protected packet has been reproduced, as described on column 6, lines 41 to 57) or when one or more data blocks whose total amount of data reaches a predetermined amount are judged as needing to be nullified (the amount corresponding to the amount of an MPEG transport packet; as described in column 6, lines 41 to 57, nullification is implemented by writing zeros over the entire data of a packet).

3.3 The distinguishing features over D1

The appellant has not disputed that the data nullification device of claim 1 differs from the device of D1 only in that the new data block is written to a recording area on the recording medium **that stores a data block which is judged as needing to be nullified**, to nullify the recorded data block and **at the same time** record the new data block (emphasis added by the board).

In other words, the data nullification device of claim 1 differs from D1 by the feature of combining the recording of the newly received data and the nullification of already reproduced data into a single writing operation. In contrast thereto, D1 performs two separate writing operations for recording new data and erasing old data.

3.4 The objective technical problem

The appellant argued that the objective technical problem was to reduce the processing capacity needed for erasing copyright protected data. The board agrees.

3.5 Obviousness in view of the teaching of D3

D3 discloses a video recording and playback system which can provide a time-shifted video stream. The incoming video stream can be recorded at a first physical location on a hard disk while the time-shifted video stream is retrieved from a different location on the hard disk (see page 4, lines 13 to 17). The two operations are time-multiplexed so quickly that they appear to happen simultaneously from the user's point

of view (see page 4, lines 8 to 12). According to one embodiment, shown in figure 4, the video stream is stored as files 001 to 009 - i.e. as large data blocks - on the hard disk (see page 2, lines 4 to 6 from the bottom, and the paragraph bridging pages 4 and 5). Furthermore part or all of the hard disk is set up as a circular buffer capable of storing X minutes of an incoming video stream (see page 5, lines 6 to 12). As a result of this set-up, newer portions of the incoming video stream are recorded over older portions of the video stream (see page 5, lines 12 to 19).

D3 refers to reducing the access time of a hard disk by reading and writing to sequential locations and using a buffer (page 4, lines 17 to 22), but it does not explicitly set out the advantages of using a circular buffer and overwriting old data by new data. However it would have been apparent to the skilled person that these measures yield at least the following two advantages:

- the old data are erased in the same step as the new data are recorded, and
- a circular buffer, by its very nature, cannot run out of space, regardless of the length of the video stream.

Starting from D1, the person skilled in the art would have become interested in D3 because D3 addressed the same general objective of allowing time-shifted reproduction of an incoming video stream by simultaneous recording and playback to and from a hard disk and because D1 encouraged the reader to use alternative methods for playback and simultaneous erasing of stored target data (see column 7, lines 29

to 32, of D1'). The person skilled in the art would therefore have searched for related documents, and would have found D3.

The skilled person would have derived from D3 the teaching that old data blocks of video data can be nullified without incurring additional workload by simply overwriting them with data blocks of new data in a circular buffer and would have wanted to adapt the apparatus of D1. In view of the concern about copyright protection in D1, the skilled person would have made sure that the size of the data blocks and the size of the circular buffer were not so large as to create copyright protection issues in the adapted device of D1.

Hence the skilled person would have combined the teachings of D1 and D3 and thereby arrived at the device of claim 1 in an obvious manner.

3.6 The appellant's arguments

The appellant submitted that D3 discloses neither copyright protection nor limiting the number of times the data can be accessed. Moreover D3 does not mention the problem of reducing the processing capacity needed for erasing old data, in particular copyright protected data. The skilled person would therefore have had no reason to arrive at D3 and to combine its teachings with those of D1.

The board agrees that D3 does not mention copyright protection, limiting the number of accesses to the data or reducing the processing capacity needed for erasing old data. Nevertheless the board is not convinced by

the appellant's arguments. As explained in section 3.5 *supra*, D3 would have been of interest to the skilled person starting from D1 because it addresses the same general objective as D1, namely time-shifted reproduction of incoming video data as well as simultaneous recording and playback, and because D1 encouraged the reader to use alternative methods for erasing the stored target data. The advantages of the circular buffer of D3 as a temporary buffer in the recording and playback operations, in particular that the old data is automatically erased when recording new data, would have been apparent to the skilled person, who would therefore have wanted to use such a circular buffer in the device of D1 in order to obtain a similar advantage.

The appellant also argued that there is no suggestion in D3 to control the nullification of the recorded data. In particular, it is not possible to select a particular recording area for nullification or to nullify (overwrite) the recorded data at a time before the next writing cycle. In contrast thereto, the present invention teaches to select a particular area of the recording medium which is to be deleted. Based on this selection, the respective recording area is overwritten by newly received data. Thus it is possible to erase the data on the recording medium immediately after the data are reproduced and determined to be nullified.

The board does not share this view. It is clear from the requirements of copyright protection that reproduced data blocks have to be destroyed, either by overwriting with arbitrary data (for instance "0" as in

D1) or by writing new data blocks over reproduced data blocks. In D3 a processor 130 reassigns pointers as newer portions of the video stream are received and older portions of the video stream are overwritten (see page 5, lines 17 to 19). There is therefore an active judgement by the processor as to which recording area must be nullified (overwritten). The person skilled in the art would have exercised this judgment in a manner so as to comply with the requirements of copyright protection, for instance by choosing a suitable temporary buffer size (X number of minutes in D3) and by overwriting reproduced data blocks in a circular manner.

3.7 For the above reasons, the subject-matter of claim 1 according to the main request does not involve an inventive step.

4. Accordingly the main request is not allowable.

The admissibility of the first to third auxiliary requests

5. According to Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536), 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.

6. In the present case the sets of amended claims according to the first to third auxiliary requests, respectively, were filed approximately one month before the oral proceedings.

7. First auxiliary request

7.1 Claim 1 according to the first auxiliary request differs from claim 1 according to the main request filed with the statement of grounds of appeal *inter alia* in that features were deleted (the "receiving unit", the nullifying of recorded data by overwriting old data with new data) and other features were added (a "utilizing unit", a "processing capacity judging unit", a new condition based on the output of the processing capacity judging unit for nullification of data blocks).

7.2 The subject-matter of claim 1 according to the first auxiliary request has thus considerably shifted from that of claim 1 filed with the statement of grounds of appeal in particular because of the deletion of the feature that the nullifying unit nullifies recorded data by overwriting old data with new data, which was the only distinguishing feature with respect to D1 and was at the core of the appellant's case for inventive step in the statement of grounds of appeal. Moreover the additional features introduced into claim 1, which were derived from dependent claims 7, 19 and 20, and description page 42, third paragraph, and figure 2 of the application as filed, were not present in any of the independent claims filed with the statement of grounds of appeal. The additional features also raised *prima facie* fresh issues in the appeal proceedings,

such as clarity, in particular because of the expression "to utilize the target data" which the examining division regarded as unclear in its communication dated 19 October 2004 (under point 9.1) and on which the appellant did not comment before the oral proceedings.

7.3 Because of this shift in the subject-matter of claim 1 and the fresh issues it raised, and in view of the fact that these amendments could have been filed with the statement of grounds of appeal, the board decided to exercise its discretion under Article 13(1) RPBA not to admit the first auxiliary request into the proceedings.

7.4 The appellant's argument that the case could be remitted to the department of first instance is not an acceptable excuse for filing these amendments at such a late stage. Remittal to the department of first instance could have been an option if the appellant had set out the complete case with the statement of grounds of appeal (see Article 12(2) RPBA), but in the present case remittal would not comply with the need for procedural economy after the issue of a communication and the arranging of oral proceedings.

7.5 Hence the first auxiliary request was not admitted into the proceedings.

8. Second auxiliary request

8.1 Claim 1 according to the second auxiliary request differs from claim 1 according to the first auxiliary request essentially by the additional feature that each

data block to be nullified is encrypted and includes an encrypted description key.

The reasons for not admitting the first auxiliary request therefore also applied to the second auxiliary request.

8.2 Accordingly the second auxiliary request was not admitted into the proceedings.

9. Third auxiliary request

9.1 Claim 1 according to the third auxiliary request differs from claim 1 according to the main request filed with the statement of grounds of appeal *inter alia* in that the following features were added:

(a) the total amount of data of the one or more data blocks is a reproduction time period of the one or more data blocks, and

(b) the predetermined amount is 90 minutes.

According to the appellant, the amendments were based on the application as filed, in particular on dependent claim 9 and the paragraph bridging pages 33 and 34 of the description.

In the oral proceedings the board observed that the above amendments introduced new problems. These problems concerned the definition of the total amount of data and the predetermined amount of data of 90 minutes. These amendments did not seem to be clearly allowable in the sense that they raised new questions under Article 123(2) EPC about the time limit of 90 minutes for one or more data blocks and introduced a

feature which was not in any previous claim. This feature was only mentioned in the description, but in a different context of a recording time limit for each data block (see e.g. page 48, paragraph 1 of the application as filed).

For these reasons the board considered these amendments to be filed too late and exercised its discretion under Article 13(1) RPBA not to admit the third auxiliary request.

10. Conclusion

Since the appellant's main request is not allowable and the first to third auxiliary requests were not admitted into the proceedings, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

L. Fernández Gómez F. Edlinger