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**Datasheet for the decision
of 2 July 2009**

Case Number: T 1496/06 - 3.5.04

Application Number: 00903596.5

Publication Number: 1066720

IPC: H04N 7/088

Language of the proceedings: EN

Title of invention:

Apparatus and method for receiving and filtering transmitted programs

Applicant:

Koninklijke Philips Electronics N.V.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 110

Relevant legal provisions (EPC 1973):

EPC Art. 84, 111(1)

Keyword:

"Claims - clarity (no)"

"Conditional withdrawal of application inadmissible"

Decisions cited:

G 0009/92, T 0009/04

Catchword:

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Case Number: T 1496/06 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 2 July 2009

Appellant: Koninklijke Philips Electronics N.V.

Representative: Groenendaal, Antonius W.M.
Philips
Intellectual Property & Standards
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 3 July 2006
refusing European application No. 00903596.5
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: F. Edlinger
Members: C. Kunzelmann
C. Vallet

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 00 903 596.5.
- II. The decision was based on the ground that the subject-matter of the independent claims according to both the main and the auxiliary request then on file did not involve an inventive step (Article 56 EPC 1973) over document D1 (EP 0 705 036 A2).
- III. The applicant appealed and requested that the decision be set aside. In the statement of grounds of appeal the appellant requested that a patent be granted on the basis of the claims of the main request attached to the decision to refuse the application. Auxiliarily, the appellant requested that a patent be granted on the basis of claims filed with the statement of grounds of appeal and oral proceedings in the event that the main request and the auxiliary request were refused.
- IV. Claim 1 of the main request reads as follows.
- "An apparatus (2) for receiving a plurality of programs, said apparatus (2) comprising data decoder means (10) for receiving program information related to at least one respective program of said plurality of programs, characterised in that the data decoder means (10) is adapted to extract from said program information:
- a format descriptor representative of a format of said respective program, for example movie or magazine;
- and

- a topic descriptor representative of a topic of said respective program, for example sports or politics, wherein the format descriptor and the topic descriptor are separate and relate to different aspects of the respective program, and the data decoder means is adapted to select the respective program on the basis of the format descriptor or the topic descriptor only."

Claim 14 of the main request reads as follows.

"A signal for representing a plurality of programs, characterised in that said signal comprises program information related to at least one respective program of said plurality of programs, said program information comprising:

- a format descriptor representative of a format of said respective program, for example movie or magazine; and

- a topic descriptor representative of a topic of said respective program, for example sports or politics, wherein the format descriptor and the topic descriptor are separate and relate to different aspects of the respective program, and the respective program is selectable on the basis of the format descriptor or the topic descriptor only."

V. Claim 1 of the auxiliary request reads as follows.

"An apparatus (2) for receiving a plurality of programs, said apparatus (2) comprising data decoder means (10) for receiving program information related to at least one respective program of said plurality of programs, characterized in that

the data decoder means (10) is adapted to extract from said program information:

- a format descriptor representative of a format of said respective program, for example movie or magazine; and

- a topic descriptor representative of a topic of said respective program, for example sports or politics, wherein the format descriptor and the topic descriptor are separate and relate to different aspects of the respective program,

the apparatus further comprising

- format selection means (14, 15, 25, 35) for selecting a first subset of said plurality of programs in accordance with a first user-supplied condition upon said format descriptor,

- topic selection means (14, 15, 25, 36) for selecting a second subset of said plurality of programs in accordance with a second user-supplied condition upon said topic descriptor, independently of the format descriptor, and

- intersection means (37) for creating a third subset of said plurality of programs by selecting programs which are common to the first and the second subset."

VI. The appellant's arguments in the statement of grounds of appeal, as far as they are relevant for the reasons for this decision, can be summarised as follows.

The present invention provided for separate topic descriptors and format descriptors which related to different aspects of classifying the program. This allowed selecting the program on the basis of the topic or format independently of each other, and reducing the number of descriptors required to describe programs.

Moreover the present invention allowed for adequate automatic filtering and selection of program content. The searching problem was addressed by the clear separate classification of format descriptors and topic descriptors. One ordinarily skilled in the art would appreciate being able to make a more focused and directed search than in the prior art. The inventors had realized that appropriately categorising program content descriptive information into distinct categories, namely format descriptors and topic descriptors, assisted in achieving accurate program content filtering and selection. D1 did not teach independent format descriptors and topic descriptors, as it treated program content descriptive information as a single grouped category.

VII. In a communication in accordance with Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to a summons to oral proceedings, the board expressed doubts whether the subject-matter of the independent claims of both the main and the auxiliary request involved an inventive step with respect to D1. The board also raised objections under Article 84 EPC 1973 against the claims of both the main and the auxiliary request. Furthermore the board annexed to the communication a copy of a standard for Electronic Programme Guides (ETS 300 707) of the European Telecommunications Standards Institute (ETSI) which was published in May 1997.

VIII. In a fax dated 25 June 2009 the appellant announced that it would not attend the oral proceedings and withdrew its request for oral proceedings. No arguments

dealing with the objections raised in the board's communication were submitted.

- IX. In a fax dated 26 June 2009 the appellant withdrew the application on the condition that any fee was refunded, explicitly setting out that, if no refund was possible, the application was not withdrawn.
- X. Oral proceedings were held on 2 July 2009 in the absence of the appellant in application of Rule 71(2) EPC 1973. At the end of the oral proceedings the chairman announced the board's decision.

Reasons for the Decision

1. *Admissibility*
- 1.1 The appeal is admissible.
2. *Conditional withdrawal of the application*
- 2.1 The appellant's initial request was that the decision be set aside in appeal proceedings and a patent be granted. According to the principle of party disposition this request determines the extent of the appeal proceedings (see G 9/92, Reasons points 1, 3 and 9).
- 2.2 On the other hand, the appellant's conditional withdrawal of the application, if legally effective, means that the appellant now requests that "any fee is refunded" with the immediate termination of the appeal proceedings without examination of the appeal, which is

the consequence of a withdrawal of the application in appeal proceedings in accordance with established case law. The conditional withdrawal in effect thus aims at an alternative to the examination of the appeal provided for in Article 110 EPC and Article 111(1) EPC 1973 so that it remains open whether the appellant requests that the board decide on the appeal or not.

2.3 Consequently the conditional withdrawal of the application aims at extending the appeal to subject-matter which has no basis in the EPC and is contrary to the principle of party disposition. Thus it is inadmissible in the appeal proceedings and does not have any legal effect (see T 9/04).

3. *Main request: clarity (Article 84 EPC 1973)*

In the communication accompanying the summons to oral proceedings the board essentially set out the following reasons for its negative opinion on the clarity of the claims. The appellant has neither amended the claims nor presented any counterarguments. The board in its deliberation saw no reason to deviate from this reasoning.

3.1 The expression "format" may be used to specify the content of a program at least in the context of television programs to which the embodiments of the present application relate. For example, the widely known game show "Who wants to be a millionaire" is generally called a "format", even though "game shows" is a genre or topic within the meaning of these words in the present application (see the topic subdescriptor "game shows" on page 8 of the present application). On

the other hand, the aspect ratio of a television program (16:9, 4:3, etc.) is generally also called a format of the television program. Many other meanings are also conceivable, for instance whether the respective program is encrypted or not, or whether the respective program is transmitted with subtitles or not. Hence the meaning of the expression "format descriptor" is vague. Not even the difference in meaning of the expressions "format descriptor" and "topic descriptor" is clear because the expression used in the independent claims that the descriptors "relate to different aspects" does not allow one to distinguish between a "format descriptor" and a "topic descriptor". The expression "aspects" itself is namely vague and may designate, for instance, different topics or different formats.

3.2 Also in the present application the "format descriptors" and "topic descriptors" are not clearly distinguished. For example, "News" is presented as a format descriptor (see the list on page 6), but "News" is also a topic descriptor, specifically a topic subdescriptor of a topic descriptor "News & Current Affairs" (see page 9). As a further example, "Movie" and "TV Drama" are presented as format descriptors, whereas "Film & Drama" is also a topic descriptor (see page 10). But "Movie" and "TV Drama" may represent the same aspects of a respective program as "Film & Drama". Or the topic subdescriptor "Live events" (see page 8) may represent an aspect of a respective program also represented by the format descriptor "Event/Performance". Similarly, the topic subdescriptors "Talk shows", "Game shows", "Quiz shows", "Variety shows", "Talent shows", "Awards shows" and

"Impressionists' shows"(see pages 8 and 11) may represent an aspect of a respective program also represented by the format descriptor "Show". As a further example, the topic descriptor "Education" with the sub-descriptor "Educational programs" (page 9) may represent an aspect of a respective program also represented by the format descriptor "Informative/Educational". Thus the concrete examples given in the description indicate that "format descriptors" and "topic descriptors" may relate to the same aspect of a respective program. Hence the difference in meaning of the expressions "format descriptor" and "topic descriptor" in the claims is not clear from the application. Thus the claims of the main request do not fulfil the requirements of Article 84 EPC 1973.

- 3.3 The board has investigated whether these expressions had a given meaning or related to particular elements of the data structure of a television signal in the context of relevant technical standards, such as the DVB standard mentioned in the present application (page 5). This is not the case. To better illustrate this, the board decided to introduce with the communication accompanying the summons a standard for Electronic Programme Guides (ETS 300 707) of the European Telecommunications Standards Institute (ETSI) (see point VII above). In particular "subclauses" 11.3.1 and 11.3.2 ("Syntax for the Programme Information Structure" and "Semantics for the Programme Information Structure") of this standard set out that an EPG in accordance with the standard may comprise "themes", namely content identifiers (see subclauses 11.12.7) and a number of separate, additional sorting

criteria ("sortcrit"). Sorting criteria are free for coding by the service provider or network operator. Furthermore an EPG may comprise "feature_flags" indicating whether the programme is a Widescreen format, an encrypted format, or in the PAL+ format (see Table 17). When a search is performed according to different criteria, the result of the combined search contains only programs which fulfil every criterion (see subclause 11.12.4.2). In the context of the standard, different criteria would for instance be a "theme", a "sortcrit" or a "feature_flag".

Hence the signal specified in claim 14 of the main request may be a signal in accordance with the standard ETS 300 707, wherein the "topic descriptor" is a theme, and the "format descriptor" is a sortcrit which relates to an aspect which is different from the theme. Even if the clarity problem discussed in points 3.1 and 3.2 above were solved (for instance by specifying the format descriptors and the topic descriptors) the signal structure might still be that specified in the standard ETS 300 707. Nothing is disclosed in the present application about a different signal structure which could distinguish the claimed signal in technical terms from the generally known signal except for the meaning given to it by categorizing known data elements and assigning them to different descriptor classes in the receiver. Furthermore, for instance if different service providers use the same coding for differently defined sorting criteria, the two signals themselves may be identical even though the format descriptors representing the differently defined sorting criteria have different meanings. Thus different format descriptors do not necessarily result in different

signals. Hence the signal specified in claim 14 of the main request is at least not clear (Article 84 EPC 1973). In this context the board also notes that the feature that "the program is selectable on the basis of the format descriptor or the topic descriptor only" in claim 14 of the main request is not a feature of the signal but relates to the processing of the signal after its reception.

4. *Auxiliary request: clarity (Article 84 EPC 1973)*

4.1 The clarity objections raised in points 3.1 and 3.2 above with respect to the main request are also relevant with respect to the claims of the auxiliary request. The additional features of claim 1, in particular those relating to selection and intersection means, neither explicitly nor implicitly further characterise the format descriptor and the topic descriptor. Thus they cannot clarify the meaning of these expressions (and their distinction) in the context of claim 1.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:

L. Fernández Gómez

F. Edlinger