Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [ ] To Chairmen
(D) [X] No distribution

Datasheet for the decision
of 12 November 2009

Case Number:	T 1839/06 - 3.5.04
Application Number:	97944397.5
Publication Number:	0976247
IPC:	H04N 7/173
Language of the proceedings:	EN

Title of invention:
System for forming and processing an MPEG compatible
datastream incorporating internet information

Applicant:
THOMSON CONSUMER ELECTRONICS, INC.

Opponent:
–

Headword:
–

Relevant legal provisions:
EPC Art. 54 (3)

Relevant legal provisions (EPC 1973):
EPC Art. 84, 111(1)

Keyword:
"Novelty (yes)"
"Claims – clarity (yes)"
"Decision re appeals – remittal (yes)"

Decisions cited:
–

Catchword:
–

EPA Form 3030 06.03

C2487.D

Case Number: T 1839/06 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 12 November 2009

Appellant: THOMSON CONSUMER ELECTRONICS, INC.
                        10333 North Meridian Street
                        Indianapolis, IN 46290-1024   (US)

Representative: Rittner, Karsten
                        Deutsche Thomson OHG
                        European Patent Operations
                        Karl-Wiechert-Allee 74
                        D-30625 Hannover   (DE)

Decision under appeal: **Decision of the Examining Division of the**
                            European Patent Office posted 14 July 2006
                            refusing European patent application
                            No. 97944397.5 pursuant to
                            Article 97(1) EPC 1973.

Composition of the Board:

Chairman: F. Edlinger
Members: C. Kunzelmann
                   T. Karamanli

C2487.D

Summary of Facts and Submissions

I.   The appeal is against the decision of the examining
        division to refuse European patent application
        No. 97 944 397.5.

II.   The application was refused on the ground of lack of
        novelty with respect to document

        D2: WO 97/41690 A1,

        a European prior right under Article 54(3), (4)
        EPC 1973 in conjunction with Article 158(1) and (2)
        EPC 1973.
        A further ground for refusal was lack of clarity
        (Article 84 EPC 1973) of a dependent claim.

III.   The applicant appealed and filed new claims according
        to a main request and a first, second and third
        auxiliary request with the statement of grounds of
        appeal. Auxiliarily, the appellant requested oral
        proceedings.

IV.   The board issued a communication pursuant to
        Article 15(1) of the Rules of Procedure of the Boards
        of Appeal (RPBA) annexed to a summons to oral
        proceedings. In this communication the board indicated
        its intention to exercise its discretion under
        Article 111(1) EPC to remit the case to the first
        instance for further prosecution if it came to the
        conclusion that the appeal was allowable.

V.   With a letter dated 6 November 2009 the appellant filed
        claims 1 to 8 of an amended main request replacing all

requests then on file. The appellant requested that the
decision under appeal be set aside and that the board
decide "based only on the amended main request" filed
with the letter dated 6 November 2009. The appellant
also announced that it would not participate in the
oral proceedings.

VI.   Oral proceedings were held on 12 November 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.

VII.   Claim 1 reads as follows.

"A method for processing a composite data format
including MPEG compatible video data and Internet image
information, comprising the steps of:
receiving MPEG system data including
(a) a first transport packet with a header containing a
first data identifier for identifying said video
program data in a payload of said first transport
packet;
(b) a second transport packet containing
a second data identifier for identifying said Internet
image information, said Internet *image* information
being contained in a payload of said second transport
packet, *wherein said Internet image information*
includes image data of an Internet web page, said image
data of said Internet web page being encoded using one
or more of HTML and JAVA; and
ancillary data containing said second data identifier
and supporting identification and decoding of said
Internet *image* information; and
processing

C2487.D

(1) said Internet *image* information using said ancillary data, and
(2) said video program data identified using said first data identifier, to form a composite image."

Claims 2 to 8 are dependent on claim 1.

The amendments in claim 1 with respect to claim 1 on which the decision under appeal was based have been indicated in *italics.*

VIII.   The decision under appeal can be summarised as follows.

The content of D2 was comprised in the state of the art relevant to the question of novelty, pursuant to Article 54(3) and (4) EPC 1973, because the requirements set out in Article 158(2) EPC 1973 were met. D2 disclosed the processing of video data and additional data which were both sequentially transmitted in a data stream. The additional data included, for example, a URL and the position and extent of an emblem to be displayed in a video frame as a composite image. D2 did not explicitly explain the structure of the data stream, but it mentioned an MPEG receiver for receiving and decoding the data stream. It was generally known from the MPEG-2 standard that data representing a particular type of information (video, audio, auxiliary etc.) were grouped in transport packets preceded by a header which included respective identifiers for indicating which type of data was in the packet. The header further included ancillary data for processing the payload. Sequentially transmitting video data and additional data as shown in figure 2B of D2 was not in contradiction to transmitting these data

encapsulated in different transport packets in an MPEG
transport stream.

Furthermore in claim 7 the feature "said program map
information associates said Internet information, said
first data identifier and said second data identifier"
was vague and had no limiting effect.

IX.   The appellant's arguments can be summarised as follows.

D2 did not disclose that Internet image information was
included in MPEG system data as specified in claim 1.
D2 disclosed that a URL could be sent between frames,
but a URL was not Internet image information. A URL was
merely an address for a web page. Furthermore the
teaching of sending a URL in a data region between
frames was inconsistent with the MPEG-2 standard
according to which frames were grouped together into
Groups of Pictures. D2 taught that information from a
particular web page was accessed through a modem with a
connection that was separate from the connection over
which MPEG video data was received. The MPEG video data
was received by a decoder/tuner over, for example, a
satellite link or a cable TV line, but not by the modem.
D2 did not provide immediate access to Internet-based
information and required a network connection to be
operational.

The objected feature in former claim 7 (now claim 5)
had been amended to clarify that the program map
information associated the Internet image information
and the video program with each other, and the program
map information associated the Internet image

information, the first data identifier and the second data identifier with each other.

Reasons for the Decision

1.   The present decision was taken after the revised European Patent Convention (EPC) entered into force on 13 December 2007. Since the European patent application in suit was pending at that time, the board applied the transitional provisions in accordance with Article 7(1), second sentence, of the Act revising the EPC of 29 November 2000 and the Decisions of the Administrative Council of 28 June 2001 (Special edition No. 1, OJ EPO 2007, 197) and 7 December 2006 (Special edition No. 1, OJ EPO 2007, 89). Articles and Rules of the revised EPC and of the EPC valid until that time are cited in accordance with the Citation Practice (see the 13th edition of the European Patent Convention, page 4).

2.   The appeal is admissible.

3.   *Amendments (Article 123(2) EPC)*

3.1   Present claim 1 is disclosed in claim 1 as originally filed in conjunction with features disclosed in the description as originally filed. In particular, the feature that "said Internet image information includes image data of an Internet web page, said image data of said Internet web page being encoded using one or more of HTML and JAVA" is disclosed on page 15, lines 11 to 19, page 16, lines 26 to 32 and page 20, lines 28 to 33, as originally filed. The feature of processing

(1) the Internet image information using the ancillary
data and (2) the video program data identified using
the first data identifier to form a composite image is
disclosed on page 2, line 30, to page 3, line 10,
page 6, lines 10 to 13, and page 17, line 26, to
page 18, line 22, in conjunction with page 15, lines 19
to 32, as originally filed. The subject-matter of
dependent claims 2 to 7 is disclosed in claims 2 to 8,
16 and 17 as originally filed, and the subject-matter
of claim 8 is disclosed on page 15, lines 11 to 14, as
originally filed.

3.2   Hence the board does not see a reason for raising an
        objection under Article 123(2) EPC against the present
        claims.

4.   *Novelty (Article 54 (1) EPC 1973 and Article 54(3) EPC)*

4.1   According to Article 1, No. 1, of the Decision of the
        Administrative Council of 28 June 2001 on the
        transitional provisions under Article 7 of the EPC
        Revision Act, Article 54(3) EPC shall apply to European
        patent applications pending at the time of its entry
        into force (13 December 2007). It is undisputed that D2,
        which validly entered the European phase and has the
        European patent application No. 97 924 569.3, belongs
        to the state of the art pursuant to Article 54(3) EPC.
        Thus D2 is not to be considered for the purpose of
        examining inventive step pursuant to Article 56, second
        sentence, EPC 1973. The board notes that D2 is not
        state of the art according to Article 54(2) EPC 1973
        for the present application, irrespective of whether
        the present application validly claims its priority of
        14 April 1997.

4.2   D2 discloses a method for processing a composite data
       format including MPEG compatible video data (see page 8,
       lines 4 to 15) and Internet information such as a URL
       (see, for instance, page 10, lines 1 to 18).

4.3   However D2 does not disclose that the MPEG system data,
       which includes video program data in a first transport
       packet, also includes, in a second transport packet,
       Internet image information including image data of an
       Internet web page, said image data of said Internet web
       page being encoded using one or more of HTML and JAVA.

4.4   The board agrees with the decision under appeal that
       there is no contradiction between the data stream shown
       in figure 2B of D2 and the possibility of transmitting
       it in an MPEG transport stream, in the form of packets
       comprising a header containing a packet identifier
       (PID), and a payload. The video data received by
       decoder/tuner 13 for transmission to MPEG decoder 25
       (see figure 1) are MPEG system data. But the Internet
       data received by decoder/tuner 13 are not Internet
       image information as specified in present claim 1.
       Instead, the Internet data may be, for instance, a URL,
       or data identifying the position and extent of an
       emblem (see, for instance, page 10, lines 1 to 26).

       D2 also discloses that Internet image data in the form
       of a web page may be downloaded and displayed over the
       TV display to form a composite image (see figure 2C and
       page 11, lines 26 and 27). But the Internet image data
       are downloaded via a Network Interface Module, such as
       a modem 35 (see figure 1, page 11, lines 13 to 21, and
       page 14, lines 10 to 14). Hence in D2 the Internet

image data, as specified in present claim 1, are not
received via the MPEG data stream which transports the
video program data.

4.5   In view of the above the board judges that the method
of claim 1 is new with respect to the state of the art
disclosed in D2.

5.   *Clarity (Article 84 EPC 1973)*

5.1   The features objected to in the decision under appeal
are now present in amended form in dependent claim 5.
Claim 5 identifies the function of program map
information included in the MPEG system data. Namely
the program map information associates the Internet
image information, the first data identifier and the
second data identifier with each other as specified in
claim 1. Hence the claim makes clear which data are
associated with each other. In the board's judgment,
claim 5 meets the requirements of Article 84 EPC 1973.

6.   *Remittal (Article 111(1) EPC 1973)*

In view of the above, the board judges the appeal to be
allowable. However, D2 was the only document considered
in the decision under appeal, and D2 is not to be
considered in deciding whether there has been an
inventive step. Hence the board exercises its
discretion pursuant to Article 111(1) EPC 1973 to remit
the case to the first instance for further prosecution.

Order

For these reasons it is decided that:

1.   The decision under appeal is set aside.

2.   The case is remitted to the first instance for further
      prosecution.

The Registrar: The Chairman:

L. Fernández Gómez   F. Edlinger