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**Datasheet for the decision
of 10 May 2011**

Case Number: T 1919/07 - 3.5.05

Application Number: 02755479.9

Publication Number: 1421761

IPC: H04L 29/06

Language of the proceedings: EN

Title of invention:

Broadcast video channel surfing system based on internet streaming of captured live broadcast channels

Applicant:

Koninklijke Philips Electronics N.V.

Headword:

Reviewing broadcast channels on a portable device/PHILIPS

Relevant legal provisions:

EPC Art. 106, 107, 108, 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 54, 56, 84

Keyword:

"Novelty - main and first auxiliary requests - no"
"Inventive step - second and fourth auxiliary requests - no"
"Added subject-matter - third auxiliary request - yes"

Catchword:

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Case Number: T 1919/07 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 10 May 2011

Appellant: Koninklijke Philips Electronics N.V.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 31 May 2007
refusing European patent application
No. 02755479.9 pursuant to Article 97(1) EPC
1973.

Composition of the Board:

Chairman: A. Ritzka
Members: P. Cretaine
G. Weiss

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division, dispatched 31 May 2005, to refuse European patent application No. 02755479.9, published as WO 03/019900. The application was refused because of lack of clarity (Article 84 EPC 1973) of independent claims 1, 10 and 16, lack of novelty (Article 54 EPC 1973) of claims 10 and 16, and lack of inventive step (Article 56 EPC 1973) of claim 1, having regard to the disclosure of

D3: WO 01/15427.

The dependent claims were further considered to lack inventive step having regard to the disclosure of D3 and

D1: US 5 768 535.

The examining division appended to the decision under appeal its opinion that there was no basis for claim 1, as amended in examination, in the application as originally filed.

II. The notice of appeal was filed with letter received 6 August 2007. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was received 9 October 2007. It was requested that the decision to refuse be set aside and that a patent be granted on the basis of the set of claims on which the appealed decision had been based (main request), or alternatively on the basis of the set of claims according to a first, a second, a third or a fourth

auxiliary request, filed with the statement setting out the grounds of appeal.

A precautionary request for oral proceedings was also made.

III. A summons to oral proceedings to be held on 7 April 2011 was issued on 30 December 2010. In an annex accompanying the summons, the board expressed the preliminary opinion that claim 1 of all the requests did not meet the requirements of Article 123(2) EPC and further that none of the requests was allowable, for lack of novelty or inventive step having regard to the disclosures of D3 and D1.

IV. With a letter dated 9 February 2011, the appellant withdrew his auxiliary request for oral proceedings, informed the board that he would not be attending the scheduled oral proceedings and requested a decision in accordance with the state of the file.

V. In a communication sent by telefax on 15 February 2011, the board announced that the oral proceedings scheduled to be held on 7 April 2011 had been cancelled.

VI. The appellant has requested that the decision under appeal be set aside and that a patent be granted based on one of the five following sets of claims:

- main request: claim 1 filed on 24 April 2007 and claims 2 to 19 filed with letter of 28 June 2006;

- first auxiliary request: claims 1 to 9 identical to claims 1 to 9 of the main request;

- second auxiliary request: claim 1 as filed with the statement setting out the grounds of appeal and claims 2 to 9 of the main request;

- third auxiliary request: claim 1 as filed with the statement setting out the grounds of appeal and claims 2 to 9 of the main request;

- fourth auxiliary request: claim 1 as filed with the statement setting out the grounds of appeal and claims 2 to 9 of the main request.

VII. Claim 1 of the main request reads as follows:

"1. A method for reviewing broadcast channels, such as TV channels or radio channels at the same time as receiving a main channel being one of said broadcast channels by a tuner, said broadcast channels being adapted to be received in broadcast quality by said tuner, the method comprising:
capturing at least one broadcast channel while streaming said captured channel to the Internet at a reduced quality from its broadcast quality, said capturing and streaming being performed at a first site, receiving the at least one reduced quality broadcast channel at a second site by accessing the Internet and thereby receiving said streamed captured channel while the channel is being broadcasted, and at the same time receiving said main channel at broadcast quality by said tuner at the second site, the second site being remote from the first site."

Independent claim 10 of the main request reads as follows:

"10. A system for reviewing broadcast channels, such as TV channels or radio channels at the same time as receiving a main channel being one of said broadcast channels by a tuner, said broadcast channels being adapted to be received in broadcast quality by said tuner, the system comprising:
capturing means for capturing at least one broadcast channel while streaming said captured channel to the Internet at a reduced quality from its broadcast quality, said capturing being performed at first site;
receiving means for reviewing the at least one reduced quality broadcast channel by accessing the Internet and thereby receiving said streamed channel while the channel is being broadcast, the second site being remote from the first site."

Independent claim 16 of the main request reads as follows:

"16. An apparatus for reviewing broadcast channels at the same time as receiving a main channel being one of said broadcast channels by a tuner, said broadcast channels being adapted to be received in broadcast quality by said tuner, the apparatus comprising:
receiving means for receiving at least one broadcast channel at a reduced quality from its broadcast quality which has been previously captured at a remote site;
and reviewing means for reviewing the at least one reduced quality broadcast channel."

Claim 1 of the second auxiliary request differs from claim 1 according to the main request in that the wording "such as TV channels or radio channels" is deleted, in that the terms "reviewing" and "channels" are replaced with, respectively, "browsing" and "video channels", and in that the step of "displaying, in the form of a thumbnail, the received at least one reduced quality broadcast video channel at the second site" is added as a last step.

Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that the steps of "selecting the thumbnail, and said tuner tuning to the corresponding video channel in response to the selecting" are added as last steps.

Claim 1 of the fourth auxiliary request differs from claim 1 of the second auxiliary request in that the step of capturing comprises "identifying 'key' frames in video content and streaming only the frames identified".

Reasons for the Decision

1. *Admissibility*

The appeal complies with the provisions of Articles 106 to 108 EPC (see Facts and Submissions, II. above). It is therefore admissible.

2. *Added subject-matter*

2.1 In the summons to oral proceedings, the board pointed out that claim 1 according to the third auxiliary request did not meet the requirements of Article 123(2) EPC since the steps of "selecting a thumbnail, and said tuner tuning to the corresponding video channel in response to selecting" were not supported by the description and claims as originally filed and in particular not by the passage on page 6, lines 11 to 18, cited by the appellant in the statement setting out the grounds of appeal as the basis for the amendment. The appellant did not provide any argument in response to the board's objection.

The board therefore judges that the third request is not allowable (Article 123(2) EPC).

2.2 The board also pointed out that the feature present in claim 1 of all the requests, i.e. of having at the same time and at the same (second) site both a broadcast channel being received through the Internet and another broadcast channel being received through a tuner, has no unambiguous support in the application documents as originally filed. The passage in the description referring to the "picture-in-picture" PIP scheme (see page 1, lines 8 to 13) does not support said feature since the PIP requires at least two tuners in the same TV set to operate. Moreover the passage in the description describing a situation wherein a second person browses a channel without disturbing a first person watching another channel (see page 1, lines 22 to 24) does not imply that the two persons are located at the same site. Furthermore, the passage on page 1,

lines 25 to 26 shows that both actions may happen at different sites. Other passages of the description defining the purpose of the invention (see in particular page 6, lines 6 to 7, lines 10 to 13, and lines 19 to 22) do not disclose that reception through a tuner and reception through the Internet have to occur at the same location but merely describe that the claimed invention allows a user to easily review broadcast channels without having to use a tuner on its home television.

The appellant did not provide any argument in response to the board's objection. However, this is an objection which could easily be overcome and is not central to the issue of novelty and inventive step, which seems to the board to be more decisive in the present case in respect of the main, first, second and fourth auxiliary requests.

In fact the skilled person would deduce from the application as filed that receiving the main channel at broadcast quality by the tuner occurs at the same time as receiving the reduced quality broadcast channel but not necessarily at the same site. By replacing in claim 1 of all the requests the wording "by said tuner at the second site" by the wording "by said tuner", the objection under Article 123(2) EPC against claim 1 of all the requests could thus, in the judgement of the board, be overcome. The subject-matter claimed in claim 1 of the main, first, second and fourth auxiliary requests will be treated in the following as if claim 1 had been amended accordingly.

3. *Novelty and inventive step*

3.1 *Prior art*

D1 discloses a software-based encoder used when delivering video from a source to receivers through a network. The source video signal is compressed with a compression scalable depending on the bandwidth available on the network.

D3 discloses a system for receiving video broadcast channels both through a standard television set and through the Internet and therefore represents the closest prior art. Figure 1 shows a preferred embodiment wherein broadcast channels are distributed to users in several transmission ways. In particular, video channels broadcast by satellite 172 may be received by a satellite TV customer 174 or by a remote webcast 173 where the video is encoded in real time and immediately put on the Internet for access by home user 140.

3.2 *Main request*

3.2.1 D3 discloses a system for receiving broadcast channels (see figure 1, broadcast channels are issued from satellite 172), such as TV or radio channels (see page 5, lines 3 to 5: "other communication channels"). The broadcast channels may be received by a tuner at a broadcast quality (implicit from the feature of using a standard television and satellite receiver, see page 6, lines 3 to 7). The broadcast channels may also be received from the satellite by a remote webcast at a first site (173, figure 1), encoded in real time and

put on the Internet (see page 5, lines 1 to 3) in order to be viewed on a personal computer at a second site (140, 141 in figure 1). It is well known in the art of video signal transmission that every encoding process involves a loss of quality and this is acknowledged by D3 (see page 10, lines 22 to 28) which implements steps designed to ameliorate the negative aspects of encoding and compression algorithms. The channels received through the Internet therefore have a reduced quality in comparison to the channels received through a tuner. Moreover, since the term "reviewing" used in claim 1 has to be construed, based on the description, as meaning viewing for the purpose of browsing or surfing, D3 enables a user to review a broadcast channel.

D3 thus discloses a method and system for reviewing broadcast channels by:

- receiving with broadcast quality by a tuner a main channel from a set of broadcast channels, and
- receiving with reduced broadcast quality through an Internet access a second channel from the set of broadcast channels.

Thus, the features of claim 1 (method), independent claim 10 (system) and independent claim 16 (apparatus) are known from D3 and these claims do not meet the requirements of Article 54 EPC 1973.

3.2.2 The appellant argued, in the statement setting out the grounds of appeal, that broadcast quality and reduced quality should not be confused and that MPEG4 encoding was capable of delivering broadcast quality. The board assumes that the appellant was arguing that the channels received through the Internet in D3 have a

broadcast quality and not a reduced quality. In the board's judgement, the terms "broadcast quality" and "reduced quality" used in the claims are vague since they do not define the quality of the video data in terms of technical characteristics of a data signal. The compression/encoding scheme used in D3 involves, like every other scheme such as MPEG, a loss of information. Even if the aim of the scheme defined in D3 is to minimise this loss (see page 10, lines 22 to 28), the quality after compression/encoding can be considered as reduced in comparison to the broadcast quality. Therefore, in the board's judgment, the channels received through the Internet in D3 have a quality which is reduced with respect to the broadcast quality. The appellant further relied on arguments "given previously for this case". The board assumes that these arguments are the arguments which were discussed by the examining division in its Reasons for the decision, paragraphs 5.1 to 5.3, and the board agrees with the findings of the examining division in that respect.

3.3 *First auxiliary request*

Claim 1 of this request is identical to claim 1 of the main request. It is therefore not allowable for lack of novelty (Article 54 EPC 1973).

3.4 *Second auxiliary request*

In substance claim 1 adds to claim 1 of the first auxiliary request that the reduced quality broadcast video channel is displayed in the form of a thumbnail. The technique of reducing video images to thumbnail is

well known in the field (see for instance the PIP scheme mentioned in the description, page 1, lines 8 to 16). Since the appellant did not mention any surprising technical effect or advantage of using such a well-known type of display, the board judges that this feature does not contribute to the inventive step of claim 1 and that claim 1 does not meet the requirements of Article 56 EPC 1973.

3.5 *Fourth auxiliary request*

In substance claim 1 adds to claim 1 of the second auxiliary request the step of identifying "key" frames in video content and streaming only the frames identified. D1 however discloses dropping video frames to achieve frame rate scalability (see column 6, lines 52 to 55). Since the aim of this dropping is to achieve, inter alia, image browsing (see column 6, lines 59 to 62), the skilled person would incorporate, without the exercise of inventive skill, this feature of D1 into the system of D3. Moreover, the features of displaying thumbnails and identifying and streaming "key" frames do not combine in claim 1 to achieve a surprising effect but are merely juxtaposed features. The appellant did not provide any arguments in response to the board's objection with respect to claim 1 according to the fourth auxiliary request.

The board therefore judges that claim 1 does not meet the requirements of Article 56 EPC 1973.

4. There being no further requests, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:

K.Götz

A. Ritzka