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**Datasheet for the decision
of 13 July 2012**

Case Number: T 1070/08 - 3.5.04

Application Number: 05077267.2

Publication Number: 1617657

IPC: H04N5/445

Language of the proceedings: EN

Title of invention:

Program guide system with interactive advertisements

Applicant:

United Video Properties, Inc.

Relevant legal provisions:

EPC 1973 Art. 56
RPBA Art. 13

Keyword:

Inventive step - main request (no)
Admissibility of amendments - auxiliary request (no)

Catchword:

see points 3.3 and 3.4



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1070/08 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 13 July 2012

Appellant: United Video Properties, Inc.
(Applicant) 2830 De La Cruz Boulevard
Santa Clara, CA 95050 (ETATS-UNIS D'AMERIQUE)

Representative: Neobard, William John
Kilburn & Strode LLP
20 Red Lion Street
London WC1R 4PJ (ROYAUME UNI)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 15 January 2008
refusing European patent application No.
05077267.2 pursuant to Article 97(1) EPC 1973.**

Composition of the Board:

Chairman: F. Edlinger
Members: A. Dumont
B. Müller

Summary of Facts and Submissions

- I. The appeal is directed against the decision to refuse European patent application No. 05 077 267.2.
- II. The examining division refused the application on the grounds that the subject-matter of the claims then on file lacked novelty and inventive step in view of the prior-art document:

D1: WO 97/13368 A1 (wrongly identified as WO 97 49242 A in the decision under appeal).
- III. With the statement of grounds of appeal, the appellant submitted claims of a main request and of an auxiliary request and requested oral proceedings.
- IV. In a letter of 13 June 2012, in reply to a communication accompanying the summons to oral proceedings, the appellant filed a new main request and a new auxiliary request and announced that he would not be represented at the oral proceedings. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of either the main request or the auxiliary request both filed with that letter.
- V. Oral proceedings took place on 13 July 2012 in the absence of the appellant.
- VI. Claim 1 according to the main request reads as follows:

"A method for using an interactive television program guide to display a program listing, the method comprising:

displaying, on a display (106), video for a given television channel;
receiving a user request to display a program listing;
in response to the user request displaying over the video for the given television channel, an overlay comprising the program listing (110) and an advertisement (108); and
cycling the content of the advertisement such that advertisement is replaced by another periodically;
wherein:
the displayed overlay is navigable in response to user commands such that the program listing and the advertisement are each selectable, the interactive television program guide being responsive to selection of the program listing or the advertisement to perform a function associated with the selected program listing or the currently displayed content of the advertisement."

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

"A method for using an interactive television program guide to display program listings, the method comprising:
displaying, on a display (106), video for a given television channel;
receiving a user request to display a program listing;
in response to the user request displaying over the video for the given television channel, an overlay comprising the program listing (110) and an advertisement (108); and wherein:
the displayed overlay has a navigable highlight region (108) which, in response to a user command, is movable from the program listing (110) to the advertisement (112), the interactive television program guide being

responsive to a repeat of the user command while the advertisement (112) is highlighted to replace the displayed program listing with another program listing with another program listing, the highlighted advertisement (112) remaining the same in response to the repeat of the user command."

VIII. The reasoning in the decision under appeal relevant for the present decision may be summarised as follows.

The closest prior art document D1 described an interactive programme guide. If the expression "advertisement" was interpreted narrowly the method of claim 1 differed from figure 13B of D1 in that the overlay further comprised an advertisement, whereas the guide of D1 only contained additional information relating to the programme. This feature merely classified a part of the information displayed in the overlay according to its desired effect for the user. The data representing the advertisement had to be processed for display in the same manner as the programme information contained in the overlay, so that it had no technical character and did not contribute to a technical solution of a technical problem. A skilled person would have included the advertising information into the overlay of the programme guide in the same manner as the information directly relating to video programmes.

Furthermore, cycling, i.e. periodically changing, the content of advertisement was considered obvious (Article 56 EPC), since it was standard practice in television advertising.

IX. In the annex to the summons to oral proceedings the board set out additional reasons why the subject-matter

of claim 1 of the main request appeared to lack inventive step in view of D1, by combining the overlay of a programme listing as in figure 13B with the disclosure relating to the overlay advertisement icon and the associated actions mentioned on page 29, lines 11 to 38 of the description, in order to offer more interactive options to the viewer. The board noted that cycling could for instance have been implemented at a remote main facility, by periodically transmitting the appropriate content as advertisement data, including the possibility of transmitting identical content repeatedly. On the receiver side, in which the method of the present invention was implemented, cycling did not in such a case imply any technical limitation.

X. The appellant's arguments may be summarised as follows.

Re the main request

D1 did not disclose cycling advertisements in an overlay as claimed. The guide display of D1 was fundamentally static and did not change unless the user took action. The invention improved the guide display by adding to it an element that changed regardless of what the user did, but was navigable and selectable in response to user commands. Therefore, the guide display of the invention was a combination of purely user-actuated parts, such as the programme listing, and a part that changed while still enabling the user to take actions, which actions were however conditional upon what was displayed as a result of the non-user action. The "scrolling commercial message 124" in figure 12 of D1 was a single passive message, scrolling only to reveal more information about the same thing. This advertisement could not be selected but even if the

skilled person were to contemplate making it interactive, any action associated with it would be a single action. Thus there was no plausible way the skilled person could obviously arrive at the present invention from this or any other disclosure in D1.

Re the auxiliary request

Claim 1 recited the conditional and contextual nature of the navigation commands when the user had highlighted first a programme listing and then an advertisement in the overlay of the guide display. Changing the navigation rules depending on whether the highlighted item was a programme listing or an advertisement was counter-intuitive and not derivable from known programme guides, which were conventionally intended to be predictable and consistent.

Reasons for the Decision

1. The appeal is admissible.
2. Main request
 - 2.1 Document D1 (see in particular figure 13B) discloses a method for using an interactive television programme guide (Program InfoMenu 130) to display a programme listing, the method comprising the steps of displaying video for a given television channel, receiving a user request to display a programme listing and in response to the user request displaying over the video for the given television channel an overlay comprising the programme listing ("ABC Monday Night Football...") and several contextual options which are navigable in response to user commands such that the programme

listing is selectable, the programme guide being responsive to selection of each of the options to perform a function associated with the selected programme listing. Selecting option (1) ("More information" in figure 13B) may be considered as selecting the programme listing to obtain more information about the currently-tuned programme (see D1, page 33, lines 5 to 15).

- 2.2 D1, page 29, lines 11 to 38 discloses, as a further possibility of allowing user interaction, the step of displaying an advertisement icon over the programme, which icon is navigable and selectable ("moving into" and "activating" the icon) so as to perform a function associated with the currently-displayed icon, such as purchasing the advertised product. The content of the advertisement icon is targeted to the currently-tuned programme (see page 29, lines 33 to 35). It is thus also variable in time.

"Cycling the content of the advertisement" implies that the (non-technical) information content is periodically replaced and repeatedly displayed (see page 16, lines 4 to 6 of the present application). The present application is silent as to how cycling is implemented in practice. According to the description (see page 6, line 24 to page 8, line 1), cycling may be implemented at a remote facility, by periodically and repeatedly transmitting to receivers the appropriate content as advertisement data, in addition to the television channel video. On the receiver side, in which the method of the present invention is implemented, cycling would in such a case not imply any technical limitation other than periodically updating the content of the displayed advertisement when new data are received.

Thus the step of "cycling the content of the advertisement such that advertisement is replaced by another periodically" technically boils down to periodically updating the content of the displayed advertisement in the method of claim 1. Therefore, this feature does not distinguish the technical function of the claimed method from that disclosed in D1, where the advertisement icon is also periodically updated.

2.3 In D1 the advertisement icon is not displayed simultaneously with the programme listing of figure 13B. This is the only difference over the method of claim 1. However, displaying the advertisement icon together with the programme listing constitutes an obvious complement to overlay programme guides, in order to simultaneously offer more interactive options to the viewer.

2.4 Thus the subject-matter of claim 1 of the main request lacks inventive step in view of the obvious combination of the overlay of a programme listing as in figure 13B and the overlay icon mentioned on page 29 in D1.

2.5 As a result, the main request is not allowable under Article 52(1) EPC in conjunction with Article 56 EPC 1973.

3. Auxiliary request

3.1 In claim 1 according to the auxiliary request, features relating to cycling the content of the advertisement and to performing a function associated with a selected programme listing or the currently displayed content of the advertisement, identified by the appellant as the core of the invention in the main request, have been removed. Instead the last paragraph of claim 1

- according to the auxiliary request sets out a particular behaviour of the programme guide in response to a repeat of a user command while an advertisement is highlighted. In the appellant's view this particular conditional and contextual nature of the navigation commands is counter-intuitive and not derivable from known programme guides.
- 3.2 The replacing features are derived from figure 8 and the corresponding description (page 17, lines 5 to 32), to which no claim was directed before, either in the application documents as originally filed or in the course of the examination or appeal proceedings.
- 3.3 As a result, the amendments to claim 1 confront the board at a very late stage of the appeal proceedings with a substantial shift of the claimed invention in an unforeseeable direction. Admitting the claims into the proceedings would require additional and delaying procedural steps, including possible remittal to the first instance and/or an additional search for relevant prior art.
- 3.4 Moreover, the appellant has not explained what particular circumstances would justify such a shift of the claimed invention, and the board cannot see any such justification. According to Article 15(3) of the Rules of Procedure of the Boards of Appeal (RPBA; OJ EPO 2007, 536), in such a situation a board shall not be obliged to delay any step in the proceedings, including its decision, and may treat the appellant as relying only on its written case.
- 3.5 The board thus regards admission of the amendments according to the auxiliary request as contrary to procedural economy, and exercises its discretion under

Article 13(1) RPBA in not admitting the auxiliary request into the proceedings.

3.6 As a result, the auxiliary request is not admissible.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated