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Datasheet for the decision of 29 October 2014

Case Number: T 0080/09 - 3.5.01

Application Number: 03707789.8

Publication Number: 1479021

IPC: G06F17/60

Language of the proceedings: EN

Title of invention:
METHOD OF PERSONALIZING AND IDENTIFYING COMMUNICATIONS

Applicant:
Trust Media Technology S.P.R.L.

Headword:
Works of art/TRUST MEDIA

Relevant legal provisions:
EPC 1973 Art. 54

Keyword:
Novelty - (no)

Decisions cited:

Catchword:

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Case Number: T 0080/09 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 29 October 2014

Appellant: (Applicant)	Trust Media Technology S.P.R.L. rue Souveraine, 91 1050 Brussels (BE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 14 July 2008 refusing European patent application No. 03707789.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	S. Wibergh
Members:	R.R.K. Zimmermann
	P. Schmitz

Summary of Facts and Submissions

I. Euro-PCT application 03707789.8 published as international publication WO 03/067498 A2 relates to creating and distributing digital works of art.

II. The examining division refused the application for lack of inventive step. Claim 1 in the version before them read as follows:

"A method of generating a uniquely identifiable work of art, comprising the steps of:
generating a variable work of art, the variable work of art comprising at least one perceptible component and a specified range of permitted variations in at least one attribute of the at least one perceptible component;
using said variable work of art to create a first unique version by selecting the at least one attribute of the at least one perceptible component in accordance with the specified range of permitted variations; and
comparing said first unique version to alternate unique versions of said variable work of art to ensure said first unique version is different from each of said alternate unique versions."

III. The examining division cited as closest prior art a paper of J. Brasil et al., Electronic Marking and Identification Techniques to Discourage Document Copying, PROCEEDINGS OF THE CONFERENCE ON COMPUTER COMMUNICATIONS (INFOCOM). TORONTO, JUNE 12 - 16, 1994, LOS ALAMITOS, IEEE COMP. SOC. PRESS, US, vol.3, 12 June 1994, pages 1278 - 1287 (cited as document D1 in the proceedings). As indicated in the abstract, the paper proposes an electronic marking and identification technique for discouraging illicit distribution of copyrighted digital text documents. By coding format

files or text images, for example by indiscernible variations of the line or word spacing or of some font characteristics, each document is marked with a unique but concealed codeword allowing to identify the registered recipient of the document. Furthermore, in the context of dependent claims relating to audio files, the examining division cited document D2, a paper of Hartung F et al: "Digital Rights Management and Watermarking of Multimedia Content for M-Commerce Applications" IEEE Communications Magazine, IEEE Service Centre Piscataway, N.J, US, vol. 38, no. 11, November 2000 (2000-11), pages 78-84. This document discloses a digital watermarking technique for multimedia.

IV. According to the examining division, the initial text document in combination with the variable format or image coding had to be understood as a "variable work of art", using the terminology of the claims under consideration. The criterion or rule of indiscernibility, i.e. that only such variations were acceptable as coding technique which could not be discerned by the reader, implicitly disclosed the claim feature that a "range of permitted variations in an attribute of a perceptible component" was specified. The only distinguishing feature in claim 1 was the step of comparing a first unique version to alternate unique versions of the variable work of art to ensure that the first unique version was different from each of the alternate unique versions. However, according to the examining division, uniqueness of a version was necessary to enable the later association of the unique version to a particular user. In order to ensure uniqueness, therefore, it would be straightforward to implement the comparison as claimed.

V. The appellant lodged an appeal against the refusal. Together with the statement setting out the grounds of appeal, dated 19 November 2008, two sets of amended claims were filed as main and first auxiliary requests.

VI. Claim 1 of the main request read as follows:

"A method of generating and distributing uniquely identifiable musical works of art, comprising the steps of:
- creating a variable musical work of art having its content defined by an author, said content of said variable musical work of art comprising several perceptible musical components to be recorded on separate tracks to be gone into channels before being combined in an audio mixing process, channel parameters defining transformation of the contents of the channels, and a range of permitted variations in the values of one or more channels [*sic*] parameters, said range of permitted variations being specified by said author,
- fixing the values of said one or more channel parameters in a plurality of manners in accordance with the specified range of permitted variations,
- respectively performing a plurality of audio mixing processes of said variable musical work of art with the content of the channels transformed in accordance with the channel parameters values including said values fixed in a plurality of manners, thereby respectively generating a plurality of unique musical versions of said variable musical work of art, each unique musical version forming an [*sic*] uniquely identifiable musical work of art and being perceptibly different from all other unique versions,
- distributing at least one of said unique versions to a user."

VII. Claim 1 of the auxiliary request read:

"A method of generating and distributing uniquely identifiable musical works of art, comprising the steps of:
- creating a variable musical work of art having its content defined by an author, said content of said variable musical work of art comprising several perceptible musical components to be recorded on separate tracks to be combined in an audio mixing process, and a range of permitted variations in at least one attribute of at least one perceptible musical component, said range of permitted variations being specified by said author
- fixing the at least one attribute of the at least one perceptible component in a plurality of manners in accordance with the specified range of permitted variations,
respectively performing a plurality of audio mixing processes of said variable musical work of art with the at least one attribute fixed in said plurality of manners, thereby respectively generating a plurality of unique musical versions of said variable musical work of art, each unique musical version forming an uniquely identifiable musical work of art and being perceptibly different from all other unique versions,
- distributing at least one of said unique versions to a user".

VIII. Together with a summons to oral proceedings the Board presented its comments on the case. It was in particular questioned whether the invention as set out in the amended independent claims was new, or involved an inventive step, considering that it could be

regarded as a method of creating different works of art using a conventional audio mixing tool.

IX. The appellant's arguments as submitted to the Board in writing and orally in the hearing held on 16 September 2014 may be summarised as follows. An essential aspect of the claimed method was the creation of a variable musical work of art comprising perceptible components to be recorded on separate tracks. The content of each track was subjected to a transformation defined by parameters taken from a range of permitted variations specified by the author of the original piece of music. By varying those parameters a plurality of unique versions, all originals, of the variable work of art could be generated. For later retracing a reference version could be stored in a rights management database together with the identification of recipients. In a subsequent automated examination of a pirated copy the original recipient could be identified, for example through a fingerprint tool, by extracting a short but very significant ID from the content and comparing it with the ID of the stored reference version. Since the identification information was the content of the unique version itself, which was perceptibly different from all other versions, the invention offered an important advantage over the prior art fingerprinting or watermarking techniques, namely that the identification information could be encoded in such a way that it could not be removed without perceptibly degrading the content of the copyrighted work itself. The concept of document D1 using the document image or the document format file for marking each document with a unique codeword was completely different from the invention that generated a variable work of art upstream of the audio mixing process whereas the unique versions ready for

distribution were generated by an authoring tool as a result of the audio mixing process. Neither was document D2 relevant since it only used a conventional watermarking technique, in which the identification information was imperceptibly hidden into content data.

X. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the main request or the auxiliary request filed with the statement setting out the grounds of appeal dated 19 November 2008.

Reasons for the Decision

1. In appeal, the appellant has pursued its application on the basis of claims limited to the generation of *musical* works of art. The examining division's argumentation was based on prior art (D1) relating to the encoding of *documents*. Although the examining division arrived at the conclusion that the skilled person would apply the teaching of D1 also to audio files without exercising an inventive activity (decision under appeal point 3.10), the Board finds it more suitable to examine the case in relation to prior art actually relating to music. One such piece of prior art is the "classical audio mixing tool" mentioned in the present application (published description, paragraph [0057]).

2. The method of claim 1 of the main request serves to generate and distribute a musical work of art. The single distribution step contains no details, and therefore any originality in the method can only reside in the generation steps. The invention as claimed allows the creation of a plurality of "unique musical

versions" of a "variable musical work of art". This is done by "fixing the values of... channel parameters in a plurality of manners in accordance with the specified range of permitted variations".

3. Since the known audio mixing tool allows channel parameters to be varied within specified ranges - viz. those permitted by the tool - the first question is whether the invention as claimed is new. The Board finds that it is not. The claim covers the case that a first recording of a musical piece using certain values for the channel parameters is made, followed by a second recording of the same piece using (slightly) different parameter values. The created versions will be "perceptibly different from all other unique versions", as required by the claim, provided that somebody is able to tell the two recordings apart. This is a standard studio procedure, and therefore the invention lacks novelty (Article 54 EPC).

4. The Board's reasoning above is analogous with that of the examining division with respect to unique *document* versions. As the examining division pointed out, the generation of such document versions involves "non-technical considerations, as emphasized by the fact that in the present application they are determined by the author of the work of art" (decision under appeal, point 2.6). This applies to musical works as well. In fact, the suitability of the invention for any kind of work of art is highlighted at several places in the application itself (eg at [0045]).

5. Claim 1 according to the auxiliary request differs from the main request only in a number of formulations (such as "attribute" instead of "value"). It has not been

argued that the claim contains any additional features. Its subject-matter is therefore also not new.

6. The appellant argued in the hearing before the Board that it has previously not been possible, or even thought of, to generate "unique musical versions" which could be used in the same way as digital watermarks to identify individual purchasers in order to overcome the piracy problems described in paragraph [0004] of the application. The Board notes first that the independent claims are directed to the generation and distribution of works of art, but are not concerned with the identification of recipients. Secondly, and more importantly, even with such a limitation the invention would still merely set out the creation of (slightly) different versions of a work of art and the distribution of these works of art to identifiable customers. Thus, such a limited claim would cover the case that a first recording is made and sold to a first customer whose name is known to the seller (for example because it is indicated on a bill), and a second (perceptibly different) recording is made and sold to a second known customer. In case of an illegal copy of the piece of music it would be possible to find the original by first determining whether the copy is of the first or the second recording (simply by listening) and then identifying the customer from a list of sales. The described sequence of events is - apart from its (conventional) use of a mixing tool - completely non-technical (creating a piece of music, selling it, listening to it, looking up a list). Since non-technical features to not contribute to inventive step, such a method would be obvious.

7. The appellant has furthermore argued that the invention would typically involve a very large number of unique

versions. The Board notes that this feature is not in the claims and, moreover, that it is not immediately clear that the application as filed allows a limitation of the claims in this respect. It is true, as the appellant has pointed out, that the description mentions as an example 413343 different versions of a musical piece ([0116]). This is however only a single example permitting no straightforward generalisation. Moreover, even the creation of 413343 different works of art is still an aesthetic act.

As a further point, it could be assumed that - possibly technical - means would be required to distinguish automatically a very large number of versions. However, such means are not claimed. The appellant has referred to "fingerprint" tools. Such tools are mentioned in the application ([0104]), but since they are not described in any detail they could not form the basis of an acceptable claim even if they were new, something which the application does not suggest.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek S. Wibergh

Decision electronically authenticated