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**Datasheet for the decision
of 22 January 2013**

Case Number: T 0799/09 - 3.5.04

Application Number: 06101684.6

Publication Number: 1681872

IPC: H04N7/16, G06F3/00, H04B1/08

Language of the proceedings: EN

Title of invention:
Selection of media items based on user reactions

Applicant:
Bose Corporation

Headword:

Relevant legal provisions:
EPC 1973 Art. 84

Keyword:
Claims - clarity and support (no - all requests)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0799/09 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 22 January 2013

Appellant: Bose Corporation
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Representative: Brunner, Michael John
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted 1 December 2008
refusing European patent application No.
06101684.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. Edlinger
Members: M. Paci
B. Müller

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 06 101 684.6, published as EP 1 681 872 A1, itself being a divisional application from earlier European patent application published as EP 1 418 677 A2.
- II. The present application was refused on the ground that the subject-matter of claims 1 and 2 lacked novelty (Article 54(1) EPC 1973) in view of the following prior-art document:
- D1: WO 01/74059 A1.
- III. In the reasons for the decision the examining division explained that it had not been convinced by the applicant's argument that the "presets representing reactions to items of audio, video, or multimedia content previously played" were different from the user "ratings" of D1.
- IV. With the notice of appeal the appellant filed new claims 1 to 4 according to a main request and claims 1 and 2 according to an auxiliary request, replacing all claims on file.
- V. Independent claim 1 according to the appellant's **main request** reads as follows:
- "A method comprising, in connection with playing an item of audio, video, or multimedia content on an audio, video, or multimedia system (10),
receiving from a user (20) an indication of a reaction to the item from a selection from among presets, each preset representing reactions to items of

audio, video, or multimedia content previously played by an audio, video, or multimedia system (10),
selecting an item to play based on the selected preset, and
modifying the preset based on a user reaction to the selected item,
characterised by
enabling the user (20) to indicate reactions explicitly (1814, 1815) and implicitly."

Claims 2 to 4 of the main request have no bearing on the present decision.

- VI. Independent claim 1 according to the appellant's **auxiliary request** differs from claim 1 according to the main request in that the text "for a particular user," has been inserted after the phrase "each preset representing reactions to items of audio, video, or multimedia content previously played by an audio, video, or multimedia system (10),".

Claim 2 of the auxiliary request has no bearing on the present decision.

- VII. In the statement of grounds of appeal, the appellant submitted that the method of claim 1 according to both the main request and the first auxiliary request was novel because D1 only allowed the user to explicitly rate the item currently being played, whereas the preset or presets of the claimed invention represented reactions to items previously played.

Moreover, the appellant stated that claim 1 according to the auxiliary request was further distinguished from D1 by the use of dedicated presets for different users.

- VIII. In the communication annexed to the summons to oral proceedings, the board indicated *inter alia* that claim 1 of both requests did not meet the requirements of clarity and support (Article 84 EPC 1973).
- IX. By letter dated 5 December 2012, the appellant informed the board that it would not be represented at the oral proceedings. No arguments were presented relating to the observations made by the board.
- X. Oral proceedings were held by the board on 22 January 2013 in the absence of the appellant. At the end of the oral proceedings the decision was announced.
- XI. The appellant had requested in writing that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 4 of the main request or of claims 1 and 2 of the auxiliary request, both filed with the notice of appeal.

Reasons for the Decision

1. The appeal is admissible.

Clarity and support - Article 84 EPC 1973

2. Main request

- 2.1 The board considers that claim 1 according to the main request does not meet the requirements of clarity and support under Article 84 EPC 1973 for at least the following reasons:

Claim 1 refers to entities called "presets" and defines these in the claim by stating that "each preset representing reactions to items of audio, video, or multimedia content previously played by an audio, video, or multimedia system". Claim 1 also states that a "selected preset" serves as a basis for "selecting an item to play".

First, it is unclear from the definition of a preset in claim 1 whether a preset comprises merely reactions (such as "I like a little", "I like a lot", "I do not like at all", etc.) indicated by one or more users, or also information as to which item is associated to which reaction by which user.

Second, this definition is inconsistent with some of the examples of presets given in the description. For instance, a preset may include all the items (tracks) of one or more CDs even though the items **have not been previously played** (see page 28, lines 11 to 16, of the application as filed). Similarly, in another embodiment, the preset contains "simple yes/no data for each stored track or album, representing whether that track or album is in the current preset or not" (see sentence bridging pages 35 and 36), which does not require that the track or the album be previously played; for instance, there is no need to play a jazz CD to decide that it should not belong to a preset for pop music.

Third, according to the description the system may operate in several modes (see from page 26, line 13, to page 30, line 17). Except in the "automatic selection mode", the preset is no more than a list of tracks (i.e. a playlist) which has no influence on the order in which the tracks within this list are played (see

from page 27, line 34, to page 30, line 17). In the "automatic selection mode", the preset (called a "user station") associates a probability to each track, the probability being generated and dynamically updated based on user-indicated preferences (see page 36, lines 21 to 29). It is not clear whether the method of claim 1 covers all these modes or only the "automatic selection mode" and its associated presets. Indeed, in the modes in which the preset is merely a playlist and the playing order is predetermined (e.g. "normal" or "shuffle"), the step of "selecting an item to play based on the selected preset" in claim 1 may be construed as merely referring to selecting the next track in the playlist according to the predetermined order. Moreover, in the "automatic selection mode", the preset also includes (neutral) probabilities for tracks which have not yet been played (see "Initial State" in figure 31), thereby contradicting the definition of a preset in claim 1 as representing reactions to items of audio, video, or multimedia content "previously played".

Finally, claim 1 further states that the method comprises a step of "receiving from a user (20) an indication of a reaction to the item **from a selection from among presets**" (emphasis added by the board). In the board's view, it is unclear how the expression "from a selection from among presets" should be understood - (Who selects? Is the selection of a preset a step of the method?) - and whether it refers to "reaction" or "item". Since the definition of "preset" in claim 1 refers to reactions, the most straightforward interpretation of the above phrase would be that the user indicates a reaction which is taken from a selection from among several lists of reactions to previously played items. This, however, is

not supported by the description because none of the embodiments of the invention requires that the user's reaction must come from a preset, i.e. from a list of previous reactions, or "from a selection from among presets". In fact, in all the embodiments of the description the user is free to express a reaction, positive or negative, without being constrained by any past reaction (see, for instance, the "Types of user feedback" section on page 43 of the application as filed).

2.2 Since claim 1 does not meet the requirements of Article 84 EPC 1973, the main request is not allowable.

3. Auxiliary request

3.1 Claim 1 according to this request differs from claim 1 according to the main request only by the additional feature that each preset is associated with a particular user. Although this may more clearly indicate from which plurality of presets reactions are selected, this does not clarify the definition of the preset or presets as such.

3.2 Hence the objections raised under section 2 *supra* also apply to claim 1 according to the auxiliary request. As a result, the auxiliary request is not allowable.

Conclusion

4. Since none of the appellant's requests is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated