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Datasheet for the decision of 25 February 2010

Case Number: T 0987/09 - 3.5.03

Application Number: 96939775.1

Publication Number: 1084561

IPC: H04M 3/50

Language of the proceedings: EN

Title of invention:
A system for on-demand remote access to a self-generating audio recording, storage, indexing and transaction system

Applicant:
Pocock, Michael

Headword:
Audio information system/POCOCK

Relevant legal provisions:
EPC Art. 56, 123(2)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step - main request and first to sixth auxiliary requests (no)"
"Added subject-matter - first, fourth and sixth auxiliary requests (yes)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0987/09 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 25 February 2010

Appellant: Pocock, Michael
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Representative: Casey, Lindsay Joseph
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Decision under appeal: **Decision of the examining division of the European Patent Office posted 23 December 2008 refusing European application No. 96939775.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
R. Moufang

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 96939775.1 (publication number EP 1084561) which was originally filed as international application PCT/CA96/00794 (publication number WO 97/21291 A).

II. The reasons given for the refusal were that the subject-matter of the independent claims of a main request and a first auxiliary request did not involve an inventive step, Articles 52(1) and 56 EPC, having regard to the disclosure of document D2 (DE 195 07 091 A) and taking into account the common general knowledge of a person skilled in the art. Further, the independent claims of a second auxiliary request were held to violate Articles 84 and 123(2) EPC, whilst claim 1 of each one of third, fourth and fifth auxiliary requests was held to be unclear, Article 84 EPC.

III. With the statement of grounds of appeal the appellant filed claims of a main request and claims of first to sixth auxiliary requests. Arguments in support of these requests were also submitted. Oral proceedings were conditionally requested.

Claim 1 of the **main request** reads as follows:

"A computer-implemented program information system to provide users with information concerning broadcast items, the system comprising:
(a) a processing system for execution by a computer;
(b) a database coupled to said processing system;

(c) a first input means coupled to said processing system for inputting a plurality of descriptions of program items broadcast by a plurality of remote broadcast sources according to program schedules each defining at least the order of broadcasting a plurality of said program items;
(d) a user interface coupled to said processing system, said user interface providing means for placing user inquiries regarding program items; and
(e) an output means coupled to said processing system and to said user interface;

said processing system having:

(f) means for responding to a user inquiry, placed through said user interface, about a program item, by retrieving a selected program item description from said database;
(g) means for further responding to said user inquiry by causing said output means to produce a message based on said selected item description;

characterised in that:

(h) a second input means is coupled to said processing system for inputting program schedules from said plurality of remote broadcast sources;
(i) the processing system has means for correlating said program item descriptions with said program schedules and for storing said correlated program item descriptions and program schedules in said database; and
(j) the user interface provides means for placing enquiries regarding program items individually from a plurality of remote users."

Claim 1 of the **first auxiliary request** differs from claim 1 of the main request in that it additionally includes the following feature:

"(k) a user inquiry comprises at least part of a telephone number or other geographic descriptor that defines a subset of program item descriptions within said database, said subset being presented to the user for final selection".

Claim 1 of the **second auxiliary request** differs from claim 1 of the main request in that it additionally includes the following feature:

"(k) said first input means includes means for automatically extracting and storing program item descriptions from a received broadcast in response to the detection of signals inserted in said broadcast.".

Claim 1 of the **third, fourth and fifth auxiliary requests** differs from claim 1 of the main request, the first and the second auxiliary request, respectively, in that the following feature is inserted:

"(h) said first input means is arranged to allow the input of program item descriptions comprising audio content;",

in which the remaining features of the characterising portion of each claim are renumbered accordingly.

Claim 1 of the **sixth auxiliary request** reads as follows:

"A computer-implemented program information system to provide users with information concerning broadcast program items, the system comprising:
(a) a processing system for execution by a computer;
(b) a database coupled to said processing system;

(c) a first input means coupled to said processing system for inputting a plurality of descriptions of program items for storage in said database, said program items being broadcast according to a program schedule defining at least the order of broadcasting said program items;

(d) the processing system has means for correlating said program item descriptions with said program schedule and for storing said correlated program item descriptions and program schedule in said database;

(e) a user interface coupled to said processing system, said user interface providing means for remote users to place inquiries individually regarding program items; and

(f) an output means coupled to said processing system and to said user interface for responding to a user inquiry, placed through said user interface, about a program item;

characterised in that:

(g) said first input means allows the inputting of descriptions of program items broadcast by a plurality of remote broadcast sources according to respective program schedules;

(h) a second input means is provided which is coupled to said processing system for inputting program schedules from said plurality of remote broadcast sources;

(i) the processing system has means for correlating said program item descriptions with said program schedules and for storing said correlated program item descriptions and program schedules in said database

(j) a user inquiry comprises at least part of a telephone number or other geographic descriptor that defines a subset of program item descriptions within

said database, said subset being presented to the user for final selection, and

(k) the output means responds to a final selection by automatically retrieving a selected program item description from said database and sending a message to the user incorporating said selected item description.

IV. The appellant was summoned by the board to oral proceedings. The summons was accompanied by a communication in which the board gave its preliminary opinion, raising objections under Article 123(2) EPC and Article 52(1) in combination with Article 56 EPC.

More specifically, those parts of the communication which are relevant to the present decision, i.e. points 4 to 8, are reproduced below, in which reference is made to the following documents:

D1: US 4 071 698 A;

D2: DE 195 07 091 A;

D3: US 5 113 496 A;

D4: EP 0 217 308 A; and

D5: Patent Abstracts of Japan, Vol. 096, No. 003, 29 March 1996 & JP 07 307813 A.

Points 4 to 8 of the communication read as follows:

"4. *Main request*

4.1 D2 discloses, using the language of claim 1 of the main request, a computer-implemented program information system (see col. 2, lines 20 to 62, and the figure) for providing a remote user 4 with information (col. 2, lines 39 to 42 ("weitere Angaben")) concerning a broadcast program item ("Werbesendung") which is broadcast by a remote broadcast source ("Fernsehsender 2").

The system of D2 includes a processing system at an advertiser 1 (col. 2, lines 55 to 62 ("kodierte Signale", "künstlich erzeugte Sprache")) and a user interface (i.a. "Telefon 9") coupled to the processing system, in which the user interface provides means for placing, i.e. receiving, user enquiries regarding the program item. In response to a user enquiry, the advertiser provides a user with information, which implies the presence of an output means coupled to the processing system and to the user interface.

Since the program item is broadcast by the television station 2, i.e. for reception by a plurality of remote users, and communication between the advertiser 1 and the remote user 4 is via a telephone network, it is implicit that the user interface includes means which are suitable for receiving enquiries

individually from a plurality of remote users. Further, the board notes that it was well-known at the priority date that television and radio stations broadcast according to program schedules which define at least the order of broadcasting a plurality of program items.

Since the advertiser is in a position to provide a user with information, i.e. a description of the program item, in response to a user enquiry, it would in the board's view be obvious to the person skilled in the art, when faced with the problem of implementing the system of D2, to equip the system with an input means and a database, both coupled to the processing system, for respectively inputting and storing the description of the program item and, hence, to provide means for responding to a user enquiry, placed through the user interface, about the program item, by retrieving the program item description from the database and by causing the output means to produce a message based on the program item description.

It appears that the appellant agrees with the above analysis.

4.2 The appellant argues however that, when, as above, the processing system is interpreted as a computer associated with the advertiser, D2 does not disclose the features (c), (h), and (i) of claim 1 of the main request, according to which:

the first input means is for inputting a plurality of descriptions of program items broadcast by a plurality of remote broadcast sources;
a second input means is coupled to the processing system for inputting program schedules from a plurality of remote broadcast sources; and
the processing system has means for correlating program item descriptions with the program schedules and for storing the correlated program item descriptions and program schedules in the database.

4.3 Regarding these features the board notes the following:

It was common at the priority date that advertisers advertised on several radio and/or television channels or stations at the same time, possibly with different commercials for different products. Hence, it would have been obvious to the skilled person to implement the first input means and the database at the advertiser 1 in the system of D2 such that they are suitable for inputting and storing a plurality of descriptions of program items broadcast by a plurality of remote broadcast sources.

Further, at the priority date, it was common in connection with merchandising over telephone lines to respond to user enquiries either through human operators and/or by using

electronic means (see, e.g., D2, col. 2, lines 55 to 62 ("künstlich erzeugte Sprache"), D1, the abstract and col. 6, lines 35 to 41, and D4, page 2, lines 3 to 5). Hence, implementing the system of D2 such that a response by a human customer service operator is optionally available would have been obvious. In that case, if a user gives a call and is not able to accurately describe the product he saw advertised in the commercial, it would be useful for the operator to have a list which shows at what time which commercial was broadcast by which station and which product(s) was (were) advertised in that commercial. Implementing the system of D2 such that the database is used for storing this list which correlates the different program item descriptions with the program schedules, and providing means for inputting the program schedules in the database do not therefore appear to contribute to an inventive step.

4.4 The board further notes that, in view of the broad definition of the subject-matter of claim 1 of the main request, the claim appears to cover any straight-forward technical implementation of a common enquiry procedure according to which telephone enquiries about music pieces by radio listeners listening to one of several radio stations are answered by an individual who has available information about the music pieces played by consulting the respective program schedules by means of a computer for storing the program schedules and

for electronically searching the program schedule in question and the music pieces the enquiry relates to. This implementation does not appear to require inventive skill.

4.5 The above considerations apply, *mutatis mutandis*, to independent claim 29.

4.6 In view of the above, it appears that the subject-matter of claims 1 and 29 of the main request does not involve an inventive step having regard to either the common general knowledge of the person skilled in the art or the disclosure of D2 and taking into account the common general knowledge (Articles 52(1) and 56 EPC).

5. *Third auxiliary request*

5.1 In claim 1 of the third auxiliary request it is, in comparison to claim 1 of the main request, additionally specified that the first input means is arranged to allow the input of program item descriptions which comprise audio content. The appellant argues that D2 does not describe or suggest that the program item description may include audio content.

5.2 The board notes that in D2 the kind of products advertised is not specified at all. In the board's view, if the system were to be used for selling audio products, e.g. compact discs, it would have been obvious to store audio samples in order to be able to include

them in the responses to user enquiries, see also D1 (see the abstract and col. 1 ("Background of the invention")). Hence, the additional feature does not appear to contribute to an inventive step. The same considerations apply to claim 28.

5.3 Consequently, the subject-matter of claims 1 and 28 of the third auxiliary request does not appear to involve an inventive step (Articles 52(1) and 56 EPC).

6. *First and fourth auxiliary request*

6.1 Claim 1 of the first auxiliary request additionally includes the feature that the user inquiry comprises at least part of a telephone number or other geographic descriptor that defines a subset of program item descriptions within the data base, the subset being presented to the user for final selection. In support of this feature the appellant refers to page 15, line 14, to page 16, line 37 of the application as filed.

6.2 It appears however that the application as filed does not describe this feature in these general terms. The passage referred to by the appellant discloses that the system includes an area code and call letter file 1075, in which "the potential purchaser's telephone area and exchange code digits are used as a retrieval key against the area code and call letter file 1075 to retrieve the set of radio

station call letters that could be heard from that telephone exchange. The potential purchaser is asked to use the telephone to input the station call letters. The call letter numbers from the area code and call letter file 1075 are then compared with the numeric values of the station call letters input by the potential purchaser. If a match is established the system can then proceed to determine which music has been played on the selected radio station or what station specific information is requested.". See also claim 96 as originally filed.

6.3 The above-mentioned additional feature thus appears to constitute an inadmissible intermediate generalisation, i.e. a combination of features, lying somewhere between an originally broad disclosure and a more limited specific disclosure, which is not originally disclosed. Claim 1 therefore appears to contravene Article 123(2) EPC.

6.4 The board further notes that making use of geographic descriptors, e.g. a postal zip code, and information previously provided by the user, e.g. particular interests and hobbies, is already known from D3 (col. 10, lines 17 to 45) for the same purpose, namely facilitating the selection and purchase of products offered in an electronic shopping system. Applying this teaching of D3 to the system of D2 does not therefore appear to involve an inventive step (Articles 52(1) and 56 EPC).

6.5 The above considerations apply, *mutatis mutandis*, to claim 28 of the first auxiliary request and claims 1 and 27 of the fourth auxiliary request.

6.6 The subject-matter of claims 1 and 28 of the first auxiliary request and claims 1 and 27 of the fourth auxiliary request does not therefore appear to comply with the requirements of Article 123(2) EPC and Article 52(1) EPC in combination with Article 56 EPC.

7. *Second and fifth auxiliary request*

7.1 The additional feature of claim 1 of the second auxiliary request, i.e. feature (k), appears to be known from the prior art for the same purpose, see, e.g., D2, col. 2, lines 25 to 33 and 39 to 54 ("Code")), D5, the abstract ("communication sales information extract device 5"), and the application in suit, page 11, lines 5 to 12. The same considerations apply, *mutatis mutandis*, to claim 27 of the second auxiliary request and claims 1 and 27 of the fifth auxiliary request.

7.2 The subject-matter of claims 1 and 27 of the second and fifth auxiliary request does not therefore appear to involve an inventive step (Articles 52(1) and 56 EPC).

8. *Sixth auxiliary request*

8.1 The considerations given above in relation to claim 1 of the main and first auxiliary request apply, *mutatis mutandis*, to claims 1 and 28 of the sixth auxiliary request.

8.2 The subject-matter of claims 1 and 28 of the sixth auxiliary request does not therefore appear to comply with the requirements of Article 123(2) EPC and Article 52(1) EPC in combination with Article 56 EPC."

V. In response to the summons to oral proceedings, the appellant informed the board that it withdrew its request for oral proceedings. No substantive submissions in reply to the communication were filed.

VI. Oral proceedings were held on 25 February 2010 in the absence of the appellant. After deliberation the board's decision was announced.

Reasons for the Decision

1. *Articles 52(1), 56, and 123(2) EPC*

After having reconsidered the objections raised in its communication and having noted that the appellant did not file any substantive submissions in reply to the communication, the board confirms the reasoning as expressed in its communication and therefore maintains the objections raised, see point IV above.

Accordingly, the board concludes that the subject-matter of claim 1 of the main request and first to sixth auxiliary requests does not involve an inventive step, Articles 52(1) and 56 EPC, and that claim 1 of the first, fourth and sixth auxiliary request does not comply with the requirement of Article 123(2) EPC.

In consequence, as claim 1 of each request is not allowable, each of the requests as a whole is not allowable.

2. In the absence of an allowable request the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Magliano A. S. Clelland