

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [X] To Chairmen
(D) [-] No distribution

**Datasheet for the decision
of 20 October 2014**

Case Number: T 2247/09 - 3.5.02

Application Number: 02788334.7

Publication Number: 1461981

IPC: H05B37/00

Language of the proceedings: EN

Title of invention:

METHOD AND APPARATUS FOR CONTROLLING LIGHTING BASED ON USER
BEHAVIOR

Applicant:

Koninklijke Philips N.V.

Headword:

Relevant legal provisions:

EPC Art. 54(2)
EPC R. 103(1)(a)

Keyword:

Novelty - main request (no)
Reimbursement of appeal fee -
substantial procedural violation (no)
Appeal decision -
remittal to the department of first instance (yes)

Decisions cited:

Catchword:

See point 4 (reimbursement of appeal fee).



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 2247/09 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 20 October 2014

Appellant: Koninklijke Philips N.V.
(Applicant) High Tech Campus 5
5656 AE Eindhoven (NL)

Representative: Bossard, Gildas
Philips
Intellectual Property & Standards
P.O. Box 220
5600 AE Eindhoven (NL)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 25 June 2009 refusing European patent application No. 02788334.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Ruggiu
Members: H. Bronold
P. Mühlens

Summary of Facts and Submissions

I. The appeal concerns the decision of the examining division of the European Patent Office, posted on 25 June 2009, to refuse European patent application No. 02788334.7.

II. The present is the second appeal after refusal of the application No. 02788334.7. A first appeal (case T 2221/08) had been filed following a first refusal of the application by the examining division (decision posted on 8 May 2008). The statement of grounds in the case of the first appeal (letter dated 4 September 2008) contained a new set of 10 claims. In the case of this first appeal the division decided to rectify its decision (letter of 6 November 2008). The request for reimbursement of the appeal fee paid for the first appeal was refused by the board competent in case T 2121/08 (decision of 3 March 2009).

III. In a communication that was posted on 27 June 2014, the board cited a new prior art document (D4) and indicated their concerns as to novelty of the independent claims of the main request filed together with the statement of grounds of appeal dated 26 October 2009.

The appellant replied to the communication of the board with a letter dated 19 September 2014 that included, in particular, new first and second auxiliary requests and a translation of table 1 in paragraph [0009] of D4.

IV. Oral proceedings were held before the board on 20 October 2014. The appellant requested that the decision of the examining division be set aside and that a patent be granted on the basis of the claims of the main request filed with the statement of grounds of

appeal dated 26 October 2009 or on the basis of the claims of the auxiliary request filed in the oral proceedings of 20 October 2014. Further, the appellant requested reimbursement of the appeal fee.

V. The following document is relevant for the present decision:

D4: JP 05217677 (27 August 1993) for which a machine translation is available from the internet site of the Japanese Patent Office (http://www.ipdl.inpit.go.jp/homepg_e.ipdl)

VI. Claim 1 according to the main request reads:

"A method for controlling a lighting device (160), the lighting device (160) being suited for lighting an area with different settings of the lighting device (270) being recorded in a user profile (200), comprising:
- obtaining at least one of audio and video information from one or more audio/visual capture devices (150, 305) that are focused on one or more monitored areas (140);
- analyzing the obtained audio/visual information using audio and/or video content analysis techniques (320) to recognize various features in the signals obtained by the audio/visual capture devices (150);
- performing a test to determine if the audio/video content analysis detects at least one predefined user habit (330) being recorded in the user profile (200);
- when a user habit is identified (340) controlling said lighting device (160) for lighting an area in accordance with a setting of the lighting device (270) being associated with the identified user habit and being recorded in the user profile (200)."

Independent system claim 6 defines a system substantially consisting of means for carrying out the method of claim 1.

VII. Claim 1 according to the auxiliary request reads:

"A method for controlling a lighting device (160), the lighting device (160) being suited for lighting an area with different settings of the lighting device (270) being recorded in a user profile (200), comprising:

- obtaining at least one of audio and video information from one or more audio/visual capture devices (150, 305) that are focused on one or more monitored areas (140);
- identifying (310) a user being present in the monitored area (140) after obtaining the audio and video information from the one or more audio/visual capture devices (150, 305);
- analyzing (320) the obtained audio/visual information using audio and/or video content analysis techniques to recognize various features in the signals obtained by the audio/visual capture devices (150);
- performing a test to determine (330) if the audio/video content analysis detects at least one predefined user behavior action being identified by a behavioral rule recorded in the user profile (200);
- when a user behavior action is identified controlling (340) said lighting device (160) for lighting an area in accordance with a setting of the lighting device (270) being associated with the identified user behavior action and being recorded in the user profile (200);
- wherein said user behavior action is a predefined gestural command that triggers the issuance of a corresponding command to control said lighting device;

and

- wherein said user profile records various behavioral rules for more than one user, each behavioral rule identifying a corresponding user and including predefined criteria specifying conditions under which the rule should be initiated."

Independent system claim 4 according to the auxiliary request defines a system substantially consisting of means for carrying out the method of claim 1.

Claims 2, 3 and 5, 6 of the auxiliary request are dependent on claims 1 and 4, respectively

VIII. The appellant essentially argued as follows:

Document D4 did not disclose user-specific habits recorded in a user profile, but instead disclosed a lighting system with different specific settings of the lighting system. The invention of document D4 merely automated the operation of switches for selecting the different settings of the lighting system. Thus, document D4 neither disclosed user-specific habits nor a user profile in the sense of claim 1. Therefore the subject-matter of claim 1 according to the main request was new over the disclosure of document D4. The independent claims of the auxiliary request specified that a user should be identified and that the user profile should record various behavioral rules for more than one user for controlling the lighting device. These features of the claims of the auxiliary request were not disclosed in the available prior art documents, in particular not in D4.

Concerning the request for reimbursement of the appeal fee, the appellant submitted that the claims of the main request in the present case had already been

submitted with the grounds of appeal (letter dated 4 September 2008) filed in the case of the first appeal. The division rectified its decision and reimbursement of the appeal fee for the first appeal was refused. Subsequently, the division refused the application again, this second refusal having led to the present appeal. Thus, the appellant had to pay two appeal fees for having the claims filed in the first appeal considered by a board of appeal.

Reasons for the Decision

1. The appeal is admissible
2. Main request - Novelty
 - 2.1 Document D4 discloses a method with the following features (the cited passages relate to the machine translation of document D4):

D4 provides a method for controlling a lighting device (paragraph [0004]), the lighting device being suited for lighting an area with different settings of the lighting device (paragraph [0012] "3 type of illumination scenes") being recorded in a user profile (table 1, paragraph [0012] "...memorized the illumination scene corresponding to the judged act beforehand..."), comprising:

- obtaining audio and video information from one or more audio/visual capture devices (paragraph [0007] "human body sensors 1", "sound sensor 2") that are focused on one or more monitored areas (figure 1 and paragraph [0007]);
- analyzing the obtained audio/visual information using audio and/or video content analysis techniques to

recognize various features in the signals obtained by the audio capture devices (paragraph [0012] "In the judgement part 3, it is judged what kind of act is ...performed...");

- performing a test to determine if the audio/video content analysis detects at least one predefined user habit being recorded in the user profile (table 1, paragraph [0012] "...according to the relation with the act judged...");

- when a user habit is identified controlling said lighting device for lighting an area in accordance with a setting of the lighting device being associated with the identified user habit and being recorded in the user profile (table 1, paragraph [0012] "... the specific lighting conditions corresponding to each illumination scene are sent to the lighting conditioning part...").

2.2 Claim 1 of the main request defines that "audio and/or video content analysis techniques" are used for recognition. Thus, a disclosure of only one of the two defined alternatives falls under the definition of claim 1.

Document D4 discloses in paragraph [0007] "human body sensors 1" and a "sound sensor 2". No matter whether the output of the "human body sensors 1" can be considered as video information in the sense of claim 1, document D4 discloses to use audio content analysis realised via the sound sensor 2. Thus, even if one would assume that the visual sensors in document D4 ("human body sensors 1") do not provide video information, document D4 anticipates the first alternative of claim 1 directed to audio content analysis.

Moreover, the board notes that ,contrary to the argumentation of the applicant, claim 1 of the main request does not specify that a user habit in the user profile is correlated to a specific user.

Therefore, all features of claim 1 are known from document D4. Thus, the subject-matter of claim 1 of the main request is not new in the sense of Article 52(1) EPC and Article 54(1) and (2) EPC.

3. Auxiliary request - Remittal

3.1 The claims of the auxiliary request appear to constitute an attempt, following the citation of cited document D4, to bring the claims in line with the interpretation given by the appellant to the terms "user profile" and "user habit". The board has therefore decided to admit the claims of the auxiliary request into the proceedings.

A basis for claims 1 and 4 of the auxiliary request can be found in originally filed claims 1 and 7, on page 3, lines 4 to 7 and lines 21 to 24, in the paragraph bridging pages 3 and 4 as well as on page 4, lines 27 to 30 of the originally filed description and in figure 3 as originally filed. The subject-matter of dependent claims 2, 3, 5 and 6 of the auxiliary request corresponds to the subject-matter of originally filed claims 4 and 5, respectively. Therefore, the auxiliary request complies with the requirements of Article 123(2) EPC.

3.2 The following features of independent claims 1 and 4 of the auxiliary request are considered to be new in the sense of Article 54(2) EPC over the disclosure of document D4:

- "identifying (310) a user being present in the monitored area (140) after obtaining the audio and video information from the one or the other audio/visual capture devices (150, 305);"
- "wherein said user behavior action is a predefined gestural command that triggers the issuance of a corresponding command to control said lighting device;"
- and
- "each behavioral rule [in the user profile] identifying a corresponding user;"

3.3 The features relating to identifying a user and to behavioral rules for more than one user in claims 1 and 4 were not originally claimed and therefore their subject-matter was possibly neither searched nor examined by the examining division.

Consequently, the board has decided to remit the case in accordance with Article 111(1) EPC to the department of first instance for further prosecution on the basis of the claims of the auxiliary request filed in the oral proceedings on 20 October 2014.

4. Reimbursement of the appeal fee - Rule 103(1) (a) EPC

4.1 The claims of the present main request correspond to those filed together with the grounds of appeal in appeal case T 2121/08 for which the decision under appeal was rectified. The corresponding appeal fee was not reimbursed.

The appellant considers reimbursement of the appeal fee justified since the present main request is identical to the one filed together with the grounds of appeal in the first appeal case.

4.2 According to Rule 103(1)(a) EPC, an appeal fee shall be reimbursed where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

With respect to the requirements of Rule 103(1)(a) EPC, the board notes that the claims forming the basis for the first decision of the examining division posted on 8 May 2008, refusing the application, differ from the claims filed with the grounds of appeal against the first decision (letter of 4 September 2008). Moreover, the reasons given in the second decision of the examining division, posted on 25 June 2009, also differ from those given in the first decision of the examining division. The only objection in the first decision being lack of inventive step whereas the main objection in the second decision was insufficient disclosure and lack of clarity. Lack of inventive step was also reasoned in the second decision but only under the proviso of what could be understood in the light of insufficient disclosure and lack of clarity of the claims.

The requirements for granting interlocutory revision are met when the reasons for the decision under appeal were removed. In case of a new request the proceedings are resumed if further examination is required. In the present case the new request of the applicant filed together with the grounds of appeal introduced features in the independent claims that were never claimed before like for example "user profile" and "user habit" being "recorded in the user profile". Since these features were claimed for the first time with the grounds of appeal of the first appeal, the reasons for the decision under appeal were apparently removed.

Consequently, the decision to grant interlocutory revision according to Article 109(1) EPC was apparently correct. Further, the examining division had to proceed with examination of the amended claimed subject-matter which was claimed for the first time. The further examination revealed new objections, namely insufficient disclosure and lack of clarity. The mere fact that the result of this further examination was a refusal of the application based on the new request does not constitute a substantial procedural violation.

The requirements of Rule 103(1)(a) EPC are therefore not met.

Consequently, the board can not order reimbursement of the appeal fee.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution on the basis of the claims of the auxiliary request filed in the oral proceedings on 20 October 2014.
3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



U. Bultmann

M. Ruggiu

Decision electronically authenticated