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Datasheet for the decision of 22 June 2015

Case Number: T 0674/10 - 3.5.07

Application Number: 98914394.6

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Language of the proceedings: EN

Title of invention:
System for automated generation of media programs from a database of media elements

Applicant:
Medic Interactive, Inc.

Headword:
Generation of media program/MEDIC INTERACTIVE

Relevant legal provisions:
EPC Art. 56, 111(1)

Keyword:
Inventive step - main request (no) - auxiliary requests (no) - mere automation

Decisions cited:
T 0258/03, T 0845/05, T 1928/06

Catchword:

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Case Number: T 0674/10 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 22 June 2015

Appellant: (Applicant)	Medic Interactive, Inc. 12 West 37th Street New York, NY 10018 (US)
Representative:	Hertz, Oliver v. Bezold & Partner Patentanwälte - PartG mbB Akademiestrasse 7 80799 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 28 October 2009 refusing European patent application No. 98914394.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	R. Moufang
Members:	P. San-Bento Furtado
	M. Rognoni

Summary of Facts and Submissions

I. The appeal lies from the decision of the Examining Division to refuse European patent application No. 98914394.6, which originated from international application PCT/US98/06420 published as WO 98/44717, for non-compliance of the main request with the requirements of Article 84 EPC, and of the auxiliary request with those of Article 123(2) EPC.

The application concerns the creation of an audio-visual media program from a plurality of media elements.

In the decision, as "Additional Remarks", the Examining Division gave its reasoned opinion that claim 1 of the main request did not involve an inventive step over the disclosure of either document D2 or document D4:
D2: US-A-5 353 391, published on 4 October 1994;
D4: WO 96/19779, published on 27 June 1996.

II. In the notice of appeal the appellant requested that (i) the impugned decision be set aside and a patent be granted on the basis of the main request on file or, if applicable, on the basis of amendments to be filed later, and, as auxiliary requests, that (ii) the case be remitted to the department of first instance for further prosecution, and (iii) oral proceedings be held.

III. In the statement of grounds of appeal the appellant requested that the decision be set aside and that a patent be granted on the basis of the main request considered in the appealed decision and re-submitted with the grounds of appeal, or on the basis of one of

the four auxiliary requests filed with the grounds of appeal.

The appellant presented extensive arguments on clarity as well as on inventive step, and submitted documents D5 and D6 to support its contention that the term "template" was clear:

D5: "Cooperative Computer-Aided Authoring and Learning - A Systems Approach", Mühlhäuser, Max (ed.), pages 293 and 309, Kluwer Academic Publishers, 1995;

D6: excerpts from "Office 97 Tutorial: Getting Results Book", 16 January 1997, retrieved online.

IV. In a communication accompanying a summons to oral proceedings, the Board expressed the view that none of the requests satisfied the requirements of Article 84 EPC. The Board, making use of its discretion under Article 111(1) EPC, also included a preliminary opinion on the issue of inventive step of the claimed invention. The Board justified this option with the advanced age of the application and the fact that the Examining Division had also treated inventive step in the proceedings and in an *obiter dictum* in the decision.

In the preliminary opinion of the Board, none of the independent claims of the requests defined inventive subject-matter. The claimed method was defined in terms of steps usually followed by a human editor to create a media program using a system for creating an audio-visual media program, for example the authoring tool of document D4, or the video editing system of document D2. The claimed method corresponded to a mere automation of steps of a well-known process which, especially since the claim did not define specific

technical features of the implementation of the automatic steps, was obvious.

The Board also informed the appellant that, with respect to Article 83 EPC, the question might have to be discussed of whether the application sufficiently disclosed a manner of implementing some of the features of the invention related to templates.

V. With a letter of reply the appellant stated that in accordance with request (i) filed with the notice of appeal it maintained the sets of claims according to the main request and the first and second auxiliary requests filed with the grounds of appeal, and filed amended third and fourth auxiliary requests.

VI. With a letter sent in advance of the oral proceedings, the appellant withdrew the request for oral proceedings and informed the Board that it would not attend.

VII. Oral proceedings were held on 22 June 2015 in the absence of the appellant. At the end the chairman pronounced the Board's decision.

VIII. The appellant's final request was that the contested decision be set aside and that a patent be granted on the basis of the claims of the main request or, alternatively, on the basis of the claims of one of the first or second auxiliary requests submitted with the grounds of appeal, or of the third or fourth auxiliary requests submitted in advance of the oral proceedings in appeal. As an auxiliary procedural request submitted with the notice of appeal, which has not been withdrawn, the appellant requested the remittal of the application to the Examining Division for further prosecution.

IX. Claim 1 of the main request reads as follows:

"A method of creating media programming, comprising the steps of:

maintaining a database (100) containing selected information about each of a plurality of media elements;

automatically selecting a plurality of said media elements in response to a request for media programming, and automatically selecting a temporal organization for said selected media elements by using a template that imposes sequential requirements on the elements, said temporal organization not being dictated by said selected information; and

assembling said media elements into media programming."

X. Claim 1 of the first auxiliary request reads as follows:

"A method of creating media programming, comprising the steps of:

maintaining a database (100) containing selected information about each of a plurality of media elements;

selecting a plurality of said media elements in response to a request for media programming, and selecting a temporal organization for said selected media elements according to data in the request and according to information regarding the media elements, wherein said temporal organization is not dictated by said selected information; and

assembling said media elements into media programming;

characterized in that

the steps of selecting the plurality of media elements and of selecting the temporal organization are performed automatically by an editor program."

XI. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that "media elements" has been replaced by "audiovisual clips" and in that the characterising part of the claim reads as follows:

"characterized by

the additional step of maintaining a template layer containing temporal organizational templates in which preferred temporal modes of presentation of the audiovisual clips are defined; wherein

the steps of selecting the plurality of audiovisual clips and of selecting the temporal organization are performed automatically by using an editor program which selects at least one template which imposes sequential requirements on the audiovisual clips."

XII. Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that the characterising part reads as follows:

"characterized by

the additional step of maintaining a template layer containing temporal organizational templates in which preferred temporal modes of presentation of the audiovisual clips are defined; wherein

a user defines demographic characteristics of the intended recipient and an information to be conveyed and the steps of selecting the plurality of audiovisual clips and of selecting the temporal organization are performed automatically by using an editor program which selects at least one of the templates which incorporates the demographic characteristics and information to be conveyed."

XIII. Claim 1 of the fourth auxiliary request differs from claim 1 of the first auxiliary request in that in the preamble the text "wherein said temporal organization is not" was replaced by "said temporal organization not being" and in that the characterising part reads as follows:

"characterized in that

said selected information further comprises a plurality of tags associated with each of said media elements, at least one of said tags being a content tag (120) containing information relating to content of said media element, and at least one of said tags being a control tag (115) containing information other than content information;

the method further comprises the additional step of maintaining a template layer containing temporal organizational templates in which preferred modes of presentation of the elements are defined; and

the steps of selecting the plurality of media elements and of selecting the temporal organization are performed automatically by an editor program which selects at least one of the templates which imposes sequential requirements on the elements;

and wherein said step of selecting further comprises selecting two elements based on said request, selecting a temporal order for said two elements, and determining based on information in said control tags (115) whether said two elements may be assembled in the selected temporal order, and, if not, deselecting at least one of said two elements."

XIV. The reasons given in the decision under appeal can be summarised as follows:

The features "template", "impose sequential requirements on the elements" and "said temporal organisation not being dictated by said selected information" were unclear. The claim did not define which technical features corresponded to the template. Furthermore, these features were in contradiction with the dependent claims and the description.

As "Additional Remarks" the Examining Division explained that "template" could be interpreted in a manner encompassed by the disclosures of D2 and D4. Claim 1 appeared to differ from the prior art in minor details concerning the automation of the method steps, which was not inventive.

XV. The appellant's arguments, insofar as relevant for the present decision, may be summarised as follows:

The term "template" was clear because it was well known to the skilled person at the filing date of the present application. As explained in document D5, which was a standard textbook, a template was an "empty form that can be filled with certain content". In 1997, prior to the date of filing of the application, Microsoft products supported templates, as could be seen from D6.

The feature "said temporal organization not being dictated by said selected information" had a clear technical meaning, which was that the temporal organization of the media elements was not determined by the selected information, or that the system did not use the selected information for ordering the media elements. Rather, the temporal organisation was obtained from the template.

Regarding inventive step, none of the prior art documents disclosed either the automatic selection of media elements or the automatic selection of a temporal organisation of elements. Document D2 disclosed transition templates which could be used for modifying temporal aspects of the transition, but which were selected by a human editor and did not relate to the temporal organisation of the video clips. Document D4 did not disclose templates. In view of the disclosure of D4, the invention solved the technical problem of improving efficiency in customising media programming for specific purposes and users. Since the authoring process of document D4 relied on the aesthetic judgement of a human editor, and on the use of a graphical user interface (GUI) and icons for the video editing, automation of the editing process of document D4 was not obvious.

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

The invention

2. The invention is directed to the creation of an audio-visual media program from a plurality of media elements, such as video clips and audio elements, stored in a library. A database contains "selected information" about each of the plurality of media elements comprising content and other information. In response to a request for media programming, the system of the invention selects, according to the data in the request, a plurality of media elements and a temporal organisation of those media elements, and assembles

them into a media program, named "media programming" in the claim (see page 2, lines 14 to 24 and page 28, claims 1 to 6, of the international publication of the application).

3. The database contains information that allows customisation of the resulting assembled media program. Such customised audio-visual programming can be used in advertising certain products, for example to create promotional videotapes for potential customers, or for instructional purposes, for instance in health care, to provide instructional videos to patients with information regarding managing of various diseases and conditions. The customisation based on demographic characteristics of the individual, such as age, income, educational level, psychographic characteristics and other factors, is considered valuable for "increasing the effectiveness" of the videos "in communicating the information to the recipient" (page 1, lines 7 to 20).

4. The database is described on page 4, line 14 to page 9, line 12 and in Figures 2 and 3. It is organised in hierarchical layers (see Figure 3 and page 5, line 11, to page 7). At the highest level are the stylistic approach and the interface layer. In the next layer, the program layer, the "types of assets" (e.g. training, informational, entertainment) and the core content description (e.g. medical) are defined (page 6, lines 6 to 11). The template layer contains information describing "the range of the target audience in specific demographic and psychographic terms" and "temporal organizational templates" describing the "preferred temporal modes of presentation" (page 6, line 12 to page 7, line 2). The lowest layers are the module layer and the clip layer, the latter including the individual "media elements or assets".

5. The database contains for each audio or visual clip unique identifying information and additional information arranged in a hierarchical manner (page 4, line 14 to page 5, line 10; page 7, lines 15 to 23, Figure 2). The hierarchy consists of a header at the top and individual items of information or tags. The tags in the hierarchy are divided into two general categories: content tags and control tags. The content tags identify the content of the clip, e.g. according to information communicated by the clip, profiles of potential target viewers, and intended use of the clip. Control tags define "audio and video components of clips", for instance luminance range or dominant chroma value for the opening and closing of the clip, preferred or required transitions, including length and type of transition, and start and end points for dialog and action. The application states that this information can be either introduced manually by a user or derived automatically by the system (page 8, line 13 to page 9, line 12).

Clarity - all requests

6. In the contested decision, the Examining Division found that claim 1 of the main request did not clearly define the matter for which protection was sought. In its communication, the Board was also of the preliminary opinion that some claimed features were unclear, but found it appropriate in light of Article 111(1) EPC to examine the claims with regard to inventive step in order to expedite the proceedings (see also section IV above).

The Board still has doubts whether the requests fulfil the requirements of Article 84 EPC, but opted to decide

the case on the basis of the objections for lack of inventive step.

In the following discussion of inventive step, whenever necessary the Board explains how it interprets particular features of the claim, taking into account the appellant's submissions.

Main request - inventive step

7. Independent claim 1 defines the subject-matter in a broad and technically vague manner in terms of the steps performed to create a media program. The steps enumerated by the claim relating to maintaining a database of media elements, selecting media elements in response to a request, selecting a temporal organisation by using a template and assembling the media elements to a media program are standard steps performed by a media designer or programmer, or human editor, in the process of creating such a media program. This has been acknowledged in the description on page 1, line 21 to page 2, line 5, and is not contested by the appellant. The Board notes in this respect that these features appear in the preamble of claim 1 of each of the other requests.

The above also applies to the feature "said temporal organization is not dictated by said selected information". According to the appellant, this phrase described that the selected information was not used for ordering the media elements. The temporal organisation was obtained by the template, which could be set by an instructional designer and defined a sequence of programming content, as was described in the paragraph bridging pages 6 and 7. This confirms that the feature corresponds to a normal routine of the

media designer, who first decides which content to show and in which sequence, expressing these design decisions for example in a script. The designer then chooses media elements according to the content and takes into account other criteria, such as allowable transitions for audio or video.

8. The steps of the claim would usually be performed by a human editor using a system for creating an audio-visual media program, for example the authoring tool for interactive multimedia application development of document D4 (title, abstract).

9. Using the system of document D4, an interactive multimedia application can be created using timelines or timeline tracks. Multimedia objects can be created from multimedia assets, and associated with properties. Placeholder objects can also be created, which correspond to assets to be created (page 11, lines 29 to page 12, line 6).

10. Document D4 also discloses storing information for each of the media assets and media objects, including categories (page 11, lines 11 to 15), identifying information, mnemonics, and starting and ending times, or duration (page 15, lines 7 to 22, page 17, line 21 to page page 18, line 12).

11. Using the graphical user interface a user may place icons representing multimedia objects, obtained from multimedia assets, on a timeline at a time corresponding to when the object should be viewed during playback, thus integrating multimedia objects to build an interactive multimedia application (document D4, page 6, line 31 to page 7, line 15, Figure 5E, page 19, line 12 to page 20, line 4). For rapid prototyping,

the user can also use placeholder icons for representing multimedia objects from assets that have not yet been stored (page 7, lines 12 to 15). The system merges the timelines into an interactive decision list (IDL) (page 20, lines 5 to 14, page 22, lines 1 to 33, figures 6 and 7), which captures the editing decisions made by the user and is used for "control of playback or execution" of interactive objects (page 7, lines 16 to 20).

12. The Board agrees with the Examining Division that a timeline or script is a template or a "temporal organizational template". The Board notes that the example of a template given in the paragraph connecting pages 6 and 7 of the application is covered by such an interpretation.

The appellant argued that document D4 did not disclose a template imposing sequential requirements. With the conventional technique, the temporal organisation was input by the author. The IDL alone, without the author, was not able to provide a temporal organisation of the media elements.

The Board does not find this argument persuasive. A timeline, especially one using placeholders, constitutes what the appellant agreed to be a template, an "empty form which can be filled with certain content". The claim does not further specify what the template is, how it is implemented or created, or how the temporal organisation is automatically selected. In the claimed method the template may also have been created by a user. Furthermore, even though document D4 does not disclose choosing a timeline or substituting the placeholders by media elements automatically, the system of D4 automatically merges the timelines into an

IDL (page 20, lines 5 to 14, page 22, lines 1 to 33, Figures 6 and 7).

13. The claimed method differs from that known method of creating a media program in that some steps, namely the selection of a plurality of media elements and of a temporal organisation, are performed automatically.

14. This difference corresponds to an automation of some steps of the well-known process of creating a media program. Given that the claim does not define specific technical features of the implementation of the automatic steps, the Board finds that the difference is a mere automation of the known steps.

15. In its communication, the Board was of the view that such a mere automation did not involve an inventive step.

In its reply to the Board's preliminary opinion the appellant accepted that, as a general rule, a mere automation of a known process would not be considered to involve an inventive step. However, the decisions cited in section I.D.9.18.4 of the Case Law of the Boards of Appeal of the EPO, 7th edition, 2013, related to methods wherein functions were fulfilled automatically which previously were performed manually. In those examples, mechanical components were replaced by available automated components, which replaced the manual operation, combined with control means. On the contrary, the present invention taught an automation of an editing process, which previously required a mental activity of an editor, like the author of document D4. Comparable "automated components" were unknown for the editing process before the invention. It could not be obvious to replace the interactive ordering of document

D4 by using a template that imposes sequential requirements on the media elements as claimed.

Although the appeal cases mentioned in the cited passage are different from the present case, the Board cannot follow the appellant's argument. Editing a media program using the system of document D4 also involves performing steps manually using the GUI of the system of D4. In the opinion of the Board, templates were known and used in the context of the creation of media programs, and supported in an at a least semi-automated version by many editing programs, including D4 (see point 12 above). Moreover, since mental activity is as such excluded from patentability under Article 52(2)(c) and (3) EPC, the mere automation of a non-technical mental activity can in specific cases additionally be seen as lacking inventive step due to the lack of technical character of the mental activity. In such a case, the inventive step could only reside in the technical details of the implementation of the automated method. As explained above, the Board finds the few technical features mentioned in the claim to be known or obvious.

These conclusions are in line with established jurisprudence. Decision T 845/05 of 10 October 2007, reasons 1.4 states that "[t]he mere wish to automate a manually performed administrative procedure, such as an application for finance, must be regarded as obvious, and clearly a computer would be used for this purpose". Even though the Board in that case refers to the procedure as being "manually performed", it is clear that the administrative process involves mental activity. Similarly, decision T 258/03 (OJ EPO 2004, 575) held that the mere automation of a method of performing an auction did not involve an inventive step

(reasons 5.7) and in decision T 1928/06 of 20 October 2009 the Board found that the mere automation of a method of generating a user profile was an obvious programming task (reasons 1.1 and 1.2).

16. The appellant contended in the grounds of appeal that the technical problem solved by the invention over the method of document D4 was to improve the efficiency in customising media programming for specific purposes and users.

However, in the Board's view, none of the features of the claimed invention supports the allegation that the automatic method of the invention is able to better adapt the customisation for specific purposes and users than a human editor performing the same method. It is furthermore arguable whether such an "efficiency" in customisation for different purposes, for example of a commercial nature, is a technical effect. Interpreting efficiency improvement in the sense of faster generation of a media program with less effort by the human media editor, the Board finds that this is a well-known advantage of automation.

17. The appellant also argued that the method according to document D4, providing a graphical user interface and icons for representing the video elements, would be useless if the editing process was automated. Therefore, an automation of the editing process of selecting and ordering video elements was not obvious from document D4.

The Board on the contrary finds that the graphical user interface and icons would neither be useless in the system of D4 if the steps were performed automatically, nor contradict the other features of the method

performed using an automated version of the system of document D4. The GUI and icons would support further processing by the human editor. It is common practice in computer systems to allow a user to manually adapt and change the results of automatic processing. The system of the invention also includes a GUI designed to give the human editor the possibility of changing, adding to, and previewing the edit decision list (EDL) automatically produced by the method of the invention (page 12, lines 15 to 17).

18. From the above reasoning, it follows that the subject-matter of independent claim 1 of the main request does not involve an inventive step (Articles 52(1) and 56 EPC).

First Auxiliary Request

19. Claim 1 of auxiliary request 1 differs from that of the main request in that the feature reciting the use of a template was removed. It further specifies that selecting a temporal organisation is done "according to data in the request and according to information regarding the media elements", and that the steps of selecting media elements and the temporal organisation are performed automatically by an editor program.

Inventive step

20. In a manual creation of a media program, the user also selects the temporal organisation of the media elements according to information regarding the media elements, for example according to what is shown in the media element.

It is common among systems supporting automated processes to support input parameters for tuning the desired outcome of the processes. In the process of automating the manual creation of a media program using templates, it would therefore be obvious for the skilled person to support such parameters or, in other words, to perform the method "according to data in the request".

21. The fact that the automatic steps, which are editing steps, are performed by an "editor program" is self evident in the present context. The additional feature "performed ... by an editor program" hence does not change the way the Board interprets the claimed method.

22. With regard to the first auxiliary request, the appellant submitted that the automating step was not a minor design detail since it required complex decisions by an author or editor. The invention employed an expert system. None of the documents suggested that complex editing decisions could be made automatically by an editor program without human interaction.

The Board, however, finds that it was well known at the time of priority of the present application that computer programs, for example expert systems, could take over complex tasks normally performed by humans. The claim does not recite the technical features necessary to carry out those complex tasks, beyond those discussed above and known from document D4.

23. Therefore, the additional features of claim 1 of the first auxiliary request do not confer an inventive step on the claimed invention (Articles 52(1) and 56 EPC).

Second auxiliary request

24. Claim 1 of the second auxiliary request differs from that of the first auxiliary request in that it refers to "audiovisual clips" instead of "media elements" and in that the method is further defined by the additional step of maintaining a template layer containing the temporal organisational templates in which the preferred temporal modes of presentation of the audio-visual clips are defined. The claim also recites that the editor program selects at least one template which imposes sequential requirements on the audio-visual clips.

Inventive step

25. The change of the "media elements" to "audiovisual clips" does not affect the above reasoning on inventive step, which equally applies to that type of media elements.

26. Regarding the second additional feature, the use of layers in software systems was well known at the time of priority of the present application. In its letter, the appellant agreed that this was generally true, but nevertheless disputed the Board's preliminary view that it would be an obvious minor design option. It argued that the feature had to be considered in combination with the remaining features of the claim, and that the template layer was the result of the automation approach.

The Board is not persuaded by those arguments. The use of a template layer is independent of the automation, its benefits being at the programming level and being the same independently of whether the templates are

chosen automatically by the program or by a user as in document D4. The Board does not discern any additional effect, beyond those well known to the skilled person, based on the combination of this feature with the other features of the claim. The appellant did not mention any concrete synergistic effect either. Consequently, the Board considers it to be an obvious minor design option.

27. As to the third additional feature relating to the selection of a template, the Board notes that in the manual design of a media program, for example using the system of document D4, the selection of a template is done by the media designer. The mere automation of the selection is not considered to involve an inventive step for the reasons given above for the higher-ranking requests.

28. The subject-matter of independent claim 1 of the second auxiliary request therefore does not involve an inventive step (Articles 52(1) and 56 EPC).

Third auxiliary request

29. Claim 1 of the third auxiliary request further specifies that the user defines demographic characteristics of the intended recipient and information to be conveyed. The claim also recites that the editor program selects at least one template which incorporates the demographic characteristics and information to be conveyed.

Inventive step

30. The additional features of claim 1 of the third auxiliary request have the effect that the user obtains

a media program which is more adequate for a specific audience and to convey a given information. In its letter, the appellant argued that claim 1 of the third auxiliary request restricted the invention to the field of media programming for applications in medicine. The prior art solutions were not dedicated to a particular application. The Board disagrees. The claimed method could be used, for instance, to obtain a promotional video for luxury cars for potential customers with high income. This example illustrates that the claim is not restricted to the field of medicine, contrary to the appellant's argument.

Independently of whether the field of application is restricted to medicine or not, the Board notes that the adaptation of a media program for a given audience and information to be conveyed does not constitute a technical effect. The conveyed information is not necessarily technical, and the adaptation for an audience involves considerations about aesthetic aspects and cognitive processes, for example which colours are more appealing to a particular demographic group.

The additional features therefore solve the problem of adapting the media program to the demographic characteristics of the intended recipient and the information to be conveyed. Templates are often used, even in a non-technical context, for storing different styles for different audiences and fields of application. It would therefore be obvious to use specific scripts, timelines or templates for different demographic characteristics and information to be conveyed in order to solve the mentioned problem. In the opinion of the Board, this is true independently of the degree of automation of the system.

31. Consequently, claim 1 of the third auxiliary request does not fulfil the requirements of Article 56 EPC.

Fourth auxiliary request

32. Claim 1 of the fourth auxiliary request differs from that of the first auxiliary request in that it further defines that

(a) the selected information further comprises a plurality of tags associated with each of said media elements, at least one of the tags being a content tag containing information relating to content of said media element, and at least one of the tags being a control tag containing information other than content information;

(b) a template layer is maintained containing temporal organisational templates in which preferred modes of presentation of the elements are defined;

(c) the editor program selects at least one of the templates which imposes sequential requirements on the elements;

(d) the step of selecting further comprises selecting two elements based on the request, selecting a temporal order for said two elements, and determining on the basis of information in said control tags whether said two elements may be assembled in the selected temporal order and, if not, deselecting at least one of said two elements.

Inventive step

33. The features of claim 1 of the fourth auxiliary request which are common to claim 1 of the first auxiliary

request do not involve an inventive step for the reasons given above for the first auxiliary request.

Additionally, claim 1 of the fourth auxiliary request recites features (a) to (d) listed above.

34. The Board has discussed above, for the first and second auxiliary requests, features which are very similar to features (b) related to the template layer, and features (c) referring to the fact that the editor program selects a template which imposes sequential requirements. For the reasons given under points 20 to 22, 26 and 27 above, those features do not involve an inventive step.

35. With regard to features (a), the Board notes that in the system of document D4, objects are created from assets and have associated properties such as duration (page 11, line 11 to page 12, line 16). The media objects are stored in bins or subdirectories according to type or category (page 11, lines 13 to 15), and are individually labeled and stored in industry standard format, e.g. in the open media framework format (page 14, lines 12 to 21). The skilled person assumes from this passage that the labels or properties of an object may encompass attributes describing its content, such as a name or descriptive text. The passage on page 15, lines 7 to 22 discloses that time codes and edit points are properties associated with an object to allow its precise identification within the asset for "control and editing purposes". The passage on page 17, line 21 to page 18, line 12 mentions the storage of an icon representing the object and a multimedia mnemonic such as a preview of a clip. In the Board's view, the duration and edit points constitute control information, whereas the categories, multimedia

mnemonics, and possibly the icons and labels, give information about the content.

Document D4 does not disclose how the object's properties are stored, but it was standard practice at the time of priority of the application to store meta-data using tags. Since the application does not give details about the way they are implemented, the Board assumes that the tags used in the invention correspond to standard tags as those known in the art, for example from markup languages often used to store meta-data.

36. Features (d) solve conflicts when assembling two media elements.

With respect to the question of inventive step of the subject-matter of the fourth auxiliary request, the appellant referred to its letter of 28 August 2009. In that letter it is explained, regarding features similar to features (d), that they had the advantage that video clips were concatenated in such a way to improve audience acceptance, for example by using asymmetric audio transitions (see also page 17, lines 7 to 10 of the description). The Board notes that improving audience acceptance is in itself not a technical effect.

In the opinion of the Board, solving conflicts when assembling media elements, for instance with the purpose of improving audience acceptance, is part of the work of a designer or editor of media programs. Furthermore, document D4 also discloses the use of control information regarding starting and ending times, or duration of media objects, as well as of content information (see point 35 above). When selecting objects to use in a timeline, for example to

substitute the placeholders in a prototype timeline, the editor chooses the objects according to the content to be conveyed at the different phases of the media program. In a second step, the editor checks, based on the control information, whether the media objects can be assembled in the selected order. In the opinion of the Board, it is also normal, in case elements cannot be assembled in the selected temporal order, to deselect one or more of the media objects.

The Board considers that it would be obvious for the skilled person to implement an automated version of this process in the system of document D4 by using tags to store the control and content information. The Board notes that the claim does not describe further technical details of the steps recited in (d). Consequently, features (a) and (d) do not involve an inventive step.

37. The Board does not recognise a synergistic effect in the combination of features (a) and (d) with the other distinguishing features.

38. From the above reasoning, it follows that the subject-matter of claim 1 of the fourth auxiliary request does not involve an inventive step (Article 56 EPC).

Conclusion

39. The appellant has two final procedural requests: (i) that the decision be set aside and a patent be granted on the basis of the main request or of one of the four auxiliary requests, and (ii) that the case be remitted to the department of first instance for further prosecution (see section VIII above).

As explained in its communication accompanying the summons to oral proceedings, the Board decided, using its discretion under Article 111(1) EPC, to examine the requests with respect to inventive step (see also section IV and point 6 above). Given that additionally the Board concluded that none of the sets of claims of the main and auxiliary requests is allowable, both procedural requests, to set aside the decision and grant a patent and to remit the case, have to be refused.

Therefore, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

I. Aperribay R. Moufang

Decision electronically authenticated