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Datasheet for the decision of 8 December 2010

Case Number: T 0904/10 - 3.5.04

Application Number: 03075808.0

Publication Number: 1326451

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Language of the proceedings: EN

Title of invention:
Subtitle colorwiping and positioning

Applicant:
Sony Corporation

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Relevant legal provisions (EPC 1973):
EPC Art. 111(1)

Keyword:
"Amendments - added subject-matter (no)"
"Decision re appeals - remittal (yes)

Decisions cited:
-

Catchword:
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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0904/10 - 3.5.04

D E C I S I O N
of the Technical Board of Appeal 3.5.04
of 8 December 2010

Appellant: Sony Corporation
7-35 Kitashinagawa 6-chome
Shinagawa-ku
Toyko 141 (JP)

Representative: Turner, James Arthur
D Young & Co LLP
120 Holborn
London EC1N 2DY (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 7 December 2009 refusing European patent application No. 03075808.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. Edlinger
Members: C. Kunzelmann
B. Müller

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division to refuse European patent application No. 03 075 808.0.

II. The application was refused on the ground of added subject-matter (Article 123(2) EPC) in the claims of both the main and the first auxiliary request then on file.

III. The decision under appeal can be summarised as follows:

The only support in the application as filed for latching means and counting means as specified in independent claims 1 and 5 of both requests was the embodiment of figure 15 described on original description pages 38 and 39. This embodiment described dynamically positioning subtitles in only one direction along the horizontal axis of a video image, but not in both directions. Claiming means for dynamically changing the position where a subtitle was superimposed on the video image without restricting the change of position to one direction added subject-matter to the content of the application as filed.

Original claim 1 was not considered to provide support for claim 1 of both requests then on file because it did not disclose latching means and counting means driven by vertical and horizontal sync pulses, as specified in claim 1 of both requests. Although the application as filed contained passages indicating both horizontal and vertical positions (such as page 16, lines 1 and 2), it did not elaborate on the means

involved and could not be considered as a basis for the amendments.

In an obiter dictum the first instance raised the same objections under the heading of Article 76(1) EPC 1973. It also stated that since the embodiment described on pages 38 and 39 related "to vertical positioning of subtitles according to position data representing a horizontal position, a new request restricted to horizontal positioning of subtitles would not be considered prima facie allowable." The obiter dictum contained the following statement: "Even if the objections raised with regard to Article 123(2) EPC were to be overcome, which considering the contradictions in the description itself seems very unlikely, the disclosure of document D1 describing dynamically subtitle positioning using a counter would be relevant, if not for novelty, at least for inventive step."

IV. The applicant appealed and filed claims 1 to 9 of a main and a first auxiliary request as well as a replacement page 7 of the description with the statement of grounds of appeal. The appellant also submitted a summary of the function and operation of the subtitle position controlling circuitry of figure 15.

V. The appellant's arguments can be summarised as follows.

In the independent claims of the main and the first auxiliary request, the means for changing the position of subtitles had been limited to dynamically changing the horizontal position of the subtitles in the video

image. The objection raised against both requests in the decision to refuse was thus no longer applicable.

The original claims had specified latching means and counting means which were fully in conformity with figure 15. They concerned a generalisation of the embodiment of figure 15. The only amendments made to the claims were to limit them to more closely conform to the embodiment of figure 15. The fact that the claims originally had not included the features of the vertical and horizontal sync pulses was irrelevant. A person skilled in the art would understand from the application as filed, in particular figure 15 and pages 38 and 39, that for each vertical sync pulse (delineating successive frames) a horizontal position value is latched into the register 205. This value is updated on a per-frame basis, which enables the horizontal position of the subtitle to be changed with each frame. The latched horizontal position value is provided to the pixel counter 208, and each horizontal sync pulse (delineating lines of pixels) triggers each decrement of the counter value in accordance with the counted pixels.

As far as the *obiter dictum* was concerned, the appellant submitted that the comments made in respect of Article 123(2) EPC applied equally to the content of the parent application as filed. Furthermore a person skilled in the art would not interpret the embodiment of figure 15 described on pages 38 and 39 in the manner specified in the decision under appeal. D1 was of no relevance to the claimed invention.

VI. Claim 1 of the present main request reads as follows.

"A subtitle position decoding apparatus supplied with multiplexed encoded video data subtitle data and position data defining for each frame the position where a subtitle is to be superimposed on the video image the apparatus comprising:
demultiplexing means (1) for demultiplexing the video data from the subtitle data and position data;
video decoding means (3) arranged to receive the video data from the demultiplexing means for decoding the encoded video data of a video image to be displayed;
buffer means arranged to receive the subtitle data and position data from the demultiplexing means for storing the subtitle data and the position data;
control means (35) for timing a read out operation of said subtitle data from said buffer means during a real time display of said video image; and
means, responsive to the position data and horizontal and vertical sync pulses, for dynamically changing in accordance with the said position data, the *horizontal* position in the video image where said subtitle is superimposed during display; wherein the means for dynamically changing comprises:
latching means (205) operable to receive the position data from the buffer means for latching the position data on each vertical sync pulse, *the position data having a value indicative of the position of the subtitle along the horizontal axis*; and
counting means (208) *operable on each horizontal sync pulse to decrement a value of said latched position data each time a pixel of said frame is displayed,*
wherein said control means performs said read out operation when said counting means reaches zero,

thereby causing said subtitle to be superimposed on said video frame at a *horizontal* position defined by the position data."

Claim 5 of the present main request reads as follows.

"A subtitle position decoding method for decoding encoded video data multiplexed with subtitle data and position data defining for each frame the position where a subtitle is to be superimposed on the video image, the method comprising the steps of:
demultiplexing the video data from the subtitle data and position data;
video decoding the demultiplexed encoded video data of a video image to be displayed;
storing in a buffer the demultiplexed subtitle data and the position data;
timing a read out operation of said subtitle data from said buffer during a real time display of said video image; and
dynamically changing in accordance with the said position data and horizontal and vertical sync pulses the *horizontal* position on each video frame where said subtitle is superimposed during display; wherein the position of said subtitle is dynamically changed by:
latching, on each vertical sync pulse, the position data from the buffer, *the position data having a value indicative of the position of the subtitle along the horizontal axis*; and
decrementing, on each horizontal sync pulse, a value of said latched position data *each time a pixel of said frame is displayed*,
wherein said read out operation is performed when said value is decremented to zero, causing said subtitle to

be superimposed with said video frame at a *horizontal* position defined by the position data."

Amendments to the claims of the main request underlying the decision under appeal are shown in *italics.*

Claims 2 to 4 and 6 to 9 are dependent claims.

VII. The appellant requested that the decision be set aside, and oral proceedings in the event that this request were not granted.

Reasons for the Decision

1. The appeal is admissible.

2. *Main request: amendments (Article 123(2) EPC)*

2.1 The relevance of original claim 1

As convincingly argued by the appellant, original claim 1 concerns a general subtitle position decoding apparatus which is described in more detail on pages 38 and 39 of the description in the specific context of a raster scanning display which uses horizontal and vertical sync pulses. The "buffer means" correspond to the display buffer, the "latching means" correspond to the register 205 and the "counting means" correspond to the pixel counter 208 illustrated in figure 15 and described on pages 38 and 39.

Thus original claim 1 is a generalisation of the embodiment of figure 15. Hence a person skilled in the

art would have considered original claim 1 and the description of the embodiment of figure 15 as consistent disclosures within the original application.

In view of the above the argument in the decision under appeal that original claim 1 did not provide support for claim 1 because it did not disclose latching means and counting means driven by vertical and horizontal sync pulses cannot be accepted.

2.2 Present claim 1 is disclosed in claim 1 as originally filed with the following additional features.

The feature that position data define for each frame the position where a subtitle is to be superimposed on the video image is disclosed on, for instance, original page 15, line 20 to page 16, line 3. The demultiplexing means for demultiplexing the video data from the subtitle data and position data are disclosed on, for instance, original page 12, lines 11 to 16 (see also figure 1, reference sign 1). The feature that the video decoding means are arranged to receive the video data from the demultiplexing means is disclosed, for instance, on page 12, lines 19 and 20. The feature that the buffer means are arranged to receive the subtitle data and position data for storing these data is disclosed, for instance, in figure 15 and on page 38, lines 11 to 20. The means for dynamically changing the horizontal position in the video image where the subtitle is superimposed during display are generally disclosed in figure 15 and the corresponding description.

In particular, their responsiveness to the position data and the vertical and horizontal sync pulses is described on page 38, lines 17 to 23. The feature that the latching means (register 205 in figure 15) are operable to receive the position data from the buffer means for latching the position data on each vertical sync pulse is described on page 38, lines 17 to 20. The feature that the position data have a value indicative of the position of the subtitle along the horizontal axis is disclosed on page 38, lines 11 to 15 and illustrated in figures 14a-c. The feature that the counting means (pixel counter 208 in figure 15) are operable on each horizontal sync pulse is described on page 38, lines 20 to 23. The feature that the functionality of the counting means is to decrement a value of said latched position data each time a pixel of said frame is displayed is disclosed in original claim 1.

In this context the appellant's arguments have convinced the board that the time indications "on each horizontal sync pulse" and "each time a pixel of said frame is displayed" are not contradictory but instead relate to different actions to be performed: for a given line of the raster scan on the display the counting means starts decrementing the latched horizontal position data on the horizontal sync pulse. A decrementing step is then taken each time a pixel of the frame is displayed. In this way the horizontal position value set in the display buffer is decremented to zero with the result that a number of pixels corresponding to the horizontal position data are counted across before read out of the subtitle data is started, as described in the paragraph bridging

pages 38 and 39. This process can then be repeated (for a next line) on the next horizontal sync pulse.

The examining division in the decision under appeal has not contested that this allows for dynamically positioning along the horizontal axis. It is clear to a person skilled in the art that the "position data defining for each frame the position" (see claim 1) have to define also a vertical position for each frame because this cannot be left undetermined in a video frame consisting of several lines (see also page 16, lines 1 to 10 and page 25, lines 13 to 23). Therefore also the vertical position is defined. But claim 1 does not specify that the position in both directions is dynamically changed. Therefore the board can see in this respect neither an inconsistency with the disclosure in the description nor an inadmissible amendment of the application as filed.

2.3 The subtitle position decoding method of claim 5 corresponds to the functioning of the subtitle position decoding apparatus of claim 1. Hence present claim 5 is disclosed in claim 5 as originally filed in conjunction with the description and drawings as indicated in point 2.2 above in the context of claim 1.

2.4 Present claims 2 to 4 and 6 to 9 are disclosed in claims 2 to 4 and 6 to 9 as originally filed.

2.5 Hence the board finds that the claims of the main request do not contain subject-matter which extends beyond the content of the application as filed. Thus they meet the requirements of Article 123(2) EPC, and the appeal is allowable.

3. The obiter dictum in the decision under appeal does not justify that the board exercise its power within the competence of the first instance, since no complete examination has been carried out. The objection under Article 76(1) EPC 1973 is raised in the decision under appeal because "[t]he content of the application as filed is similar to the content of the parent application, at least for the part relating to dynamic subtitle positioning." (See point 18 of the decision.) Thus there is no separate and reasoned objection that the present (divisional) application, upon filing, extended beyond the content of the earlier application as filed. The other remarks either do not specify the provision of the EPC which the first instance considers to be infringed or do not constitute a reasoned objection which could be reviewed by the board.

4. Under these circumstances the board exercises its discretion under Article 111(1) 1973 in remitting the case to the first instance for further prosecution. Thus, in the present case, there is no need for the board to consider the claims of the auxiliary request. Nor was there a need to hold oral proceedings in the event that the appellant's request that the decision under appeal be set aside were not granted.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance for further prosecution.

The Registrar: The Chairman:

L. Fernández Gómez F. Edlinger