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Datasheet for the decision of 26 November 2014

Case Number: T 1194/10 - 3.5.04

Application Number: 04708806.7

Publication Number: 1593263

IPC: H04N7/16

Language of the proceedings: EN

Title of invention:
SYSTEM FOR CAPTURE AND SELECTIVE PLAYBACK OF BROADCAST PROGRAMMES

Applicant:
Tiscali UK Limited
Video Networks IP Holdings Limited

Headword:

Relevant legal provisions:
EPC 1973 Art. 56

Keyword:
Inventive step (no)

Decisions cited:

Catchword:

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Case Number: T 1194/10 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 26 November 2014

Appellant: (Applicant 1)	Tiscali UK Limited 20 Broadwick Street London, W1F 8HT (GB)
Appellant: (Applicant 2)	Video Networks IP Holdings Limited Chancery Hall 52 Reid Street Hamilton, HM12 (BM)
Representative:	Finnie, Peter John Gill Jennings & Every LLP The Broadgate Tower 20 Primrose Street London EC2A 2ES (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 28 December 2009 refusing European patent application No. 04708806.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

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

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division refusing European patent application No. 04 708 806.7, published as international patent application WO 2004/073306 A2.

II. In the decision under appeal the following prior-art document was cited:

D1: WO 01/56285 A1.

The application was refused on the grounds that claim 1 according to the main request did not meet the requirements of Article 123(2) EPC and that the subject-matter of claim 1 according to each of the first and second auxiliary requests did not involve an inventive step (Article 56 EPC) in view of document D1 and common general knowledge from the Digital Video Broadcasting (DVB) standard.

III. With the statement of grounds of appeal the appellants filed claims according to a main request (identical to the claims of the first auxiliary request underlying the contested decision) and claims according to an auxiliary request (identical to the claims of the second auxiliary request underlying the contested decision).

IV. In a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536), annexed to the summons to oral proceedings, the board introduced into the proceedings the following prior-art documents disclosing relevant parts of the DVB standard:

D3: European Standard EN 300 468 V1.3.1 (1998-02), "Digital Video Broadcasting (DVB); Specification for Service Information (SI) in DVB systems", European Telecommunications Standards Institute (ETSI), 1998, and

D4: ETSI TECHNICAL REPORT ETR 211 (August 1997, Second Edition), "Digital Video Broadcasting (DVB); Guidelines on implementation and usage of Service Information (SI)", European Telecommunications Standards Institute (ETSI), 1997.

In the communication under Article 15(1) RPBA the board expressed its provisional opinion that the subject-matter of claim 1 according to each of the appellants' requests did not involve an inventive step in view of D1 and the DVB standard (with D3 and D4 cited as evidence of the content of the latter).

V. In a letter dated 25 November 2014, the appellants withdrew its request for oral proceedings and requested that the proceedings be continued in writing or that a decision be taken on the basis of the file as it stood.

VI. The board held oral proceedings on 26 November 2014. As previously announced, the appellants did not attend.

VII. The appellants' requests are that the decision under appeal be set aside and that a patent be granted on the basis of the claims of one of the main request or auxiliary request, both submitted with the statement of grounds of appeal.

VIII. Claim 1 according to the appellants' **main request** reads as follows:

"A method for storing broadcast programmes for future transmission to a plurality of subscribers, comprising:

receiving a broadcast channel data stream comprising a plurality of sequential programmes;

extracting video and audio data for each programme from the data stream in real time;

extracting service information from the data stream in real time, where the service information depends on the programme concurrently carried by the data stream;

storing the video and audio data for each programme at a known position on a data storage means;

storing the service information for each programme at a known location on the storage means with data identifying the position on the means at which the corresponding video and audio data for the programme is stored; and,

compiling and storing a schedule of received programmes using the stored service information."

IX. Claim 1 according to the appellants' **auxiliary request** reads as follows (additions to claim 1 of the main request are underlined, deletions are ~~struck-through~~, identical text is indicated by "[...]"):

"A method for storing broadcast programmes for future transmission to a plurality of subscribers, comprising:

[...]

extracting service information from the data stream in real time, where the service information depends on the programme concurrently carried by the data stream and where said service information carries an individual event information table for a particular program and said extracting said service information

comprises extracting said individual event information table for the particular program;

[...]."

X. The examining division's reasoning as to inventive step in the decision under appeal, as far as relevant for the claims under consideration, can be summarised as follows:

The method of claim 1 differed from that of D1 in that service information was extracted from the data stream in real time.

The skilled person would have wanted to adapt the system of D1 to make it compliant with the *de facto* standard for broadcasting digital television in Europe, the DVB standard, the specifications of which belonged to the skilled person's common general knowledge. The DVB standard included the provision of Service Information (DVB-SI) together with the data stream. The skilled person would thus have extracted the Service Information from the data stream in real time, said Service Information according to the DVB standard including the start time (broadcast time) of each programme in a so-called Event Information Table (EIT).

Hence the subject-matter of claim 1 (of the then first and second auxiliary requests) did not involve an inventive step in view of D1 and common general knowledge from the DVB standard.

XI. The appellants' arguments regarding the issues relevant to the present decision can be summarised as follows:

In D1 there was no disclosure of extracting service information from the data stream. The "broadcast time"

mentioned on page 21, line 17, of D1 could thus not be assumed to have been transmitted in the data stream. It was more likely that the broadcast time had been generated locally from an internal system clock.

Moreover, the broadcast time of D1 would have been the **anticipated** broadcast time of the programme, not the **actual** broadcast time of the programme, the latter being essential to the technical effect of the present invention because it increased the accuracy of the schedule of received programmes.

Even if the skilled person had looked at the DVB standard when seeking to implement D1 in Europe, all that that document would have told him was that Service Information (SI) was embedded in the data stream. The system of D1 would have required an almost complete redesign in order to extract and utilise SI embedded in the data stream.

Furthermore, although the DVB standard had been common general knowledge for a number of years before the filing date of D1, it was not mentioned in D1. The combination of D1 with the DVB standard was thus only obvious in hindsight.

The same conclusion applied to the Event Information Table (EIT) which, although disclosed in the DVB standard, would have been used in D1 only as the result of hindsight.

For these reasons, the subject-matter of claim 1 of the main and auxiliary requests involved an inventive step.

Reasons for the Decision

1. The appeal is admissible.

Main request - Inventive step (Article 56 EPC 1973)

2. The appellants did not dispute that D1 represents the closest prior art for the subject-matter of claim 1.

3. Disclosure of D1

3.1 D1 discloses a system which can store broadcast programmes for future transmissions to a plurality of subscribers.

More specifically, the system of D1 (see e.g. figures 1, 2, 2a and 6) comprises an intermediate video supplier (1.2) which receives "live" programmes from any number of video suppliers (1.1) and simultaneously transmits these programmes to subscribers and stores them in a video buffer (2.2; short-term storage capable of storing all the programmes transmitted over a period of one or two days) for future transmission to subscribers: see page 18, lines 8 to 11; page 18, line 29, to page 19, line 4, and page 27, lines 25 to 28.

The intermediate video supplier stores not only the programmes in video buffer 2.2, but also the location and "broadcast time" of the first frame of each programme: see page 21, lines 14 to 18.

The intermediate video supplier also stores and maintains a schedule of all available programmes, including present, future and past programmes, in a

programming database (2.20) where it can be accessed by subscribers: see page 18, lines 4 to 7, page 26, lines 28 to 30, and page 27, lines 1 to 5.

In the board's understanding, the appellants have not disputed that the system of D1 comprises the above features.

3.2 D1 does not describe how said "broadcast time" of the first frame of each programme is obtained.

The examining division argued that the broadcast time had to come either from the data stream or from another source and be extracted from the data stream.

The appellants counter-argued that it was more likely that the broadcast time was generated locally from an internal system clock of the video server.

The board concurs that D1 is silent on how the broadcast time is obtained by the Store Video function 2.3.1.3 in Video Buffer 2.2 (see figure 2a).

In view of the facts that each Store Video function receives data from only one respective Video Source (see "One per Source" in figure 2a), that the broadcast time must be available when the "live" programme is received and recorded (see page 21, lines 14 to 27) and that D1 does not mention any service information being transmitted in the data stream, the board concurs with the appellants that it is not implicit in the disclosure of D1 that the "broadcast time" must have been extracted from the data stream. Indeed, it is possible (maybe even likely) that the "broadcast time" is generated from an internal system clock in Video Server 2.2.

Hence the board considers that the step of extracting service information in claim 1 is not implicitly disclosed in D1.

3.3 Regarding the "schedule of received programmes" in claim 1, since this schedule is not further defined in the claim, the board concurs with the examining division that the stored broadcast times of the stored past programmes effectively form a "schedule of received programmes", even though there is no indication in D1 that it is meant to be presented to the subscribers as an EPG (the schedule meant to be presented to the subscribers in D1 is the one stored in programming database 2.20).

4. Distinguishing features

Thus, in view of the above, the board considers that the method of claim 1 of the main request **differs** from the method of D1 solely in the distinguishing feature that the service information is extracted from the data stream in real time.

5. Technical effect

The appellants submitted that the technical effect achieved over D1 was an improved accuracy of the schedule of received programmes because the extracted service information associated with the stored past programmes included actual broadcast times which were more accurate than the expected broadcast times commonly used in programme schedules.

For the following reasons the board is not convinced that this technical effect is achieved by the method of claim 1 of the main request:

(a) Since there is no indication in claim 1 that the service information contains broadcast times, the service information may or may not improve the accuracy of the schedule.

(b) If, as submitted by the appellants, the stored "broadcast time" in D1 is generated from an internal system clock of the video server when the associated programme is stored, this broadcast time represents the actual broadcast time of the programme, not an expected broadcast time, because the "live" broadcasting and the recording of the programme in Video buffer 2.2 occur simultaneously.

Hence the board regards the technical effect of the method of claim 1 as being to provide a way of supplying service information relating to received programmes.

6. Objective technical problem

In view of this technical effect achieved over D1, the objective technical problem should be formulated as how to provide a way of supplying service information relating to received programmes.

7. Obviousness

The examining division considered that the provision of service information in the data stream was obvious when implementing the system of D1 in compliance with the Digital Video Broadcasting (DVB) standard, because this standard included the provision of Service Information (DVB-SI) in the data stream.

The appellants have not disputed that the DVB standard, the relevant parts of which are disclosed in D3 and D4, was prior art and belonged to the skilled person's common general knowledge.

The aim of the well-known DVB standard was to establish the framework for the introduction of MPEG-2 based digital television services (see D3, page 5). According to the DVB standard, Service Information (SI) is placed in the bitstream in order to provide the user with information to assist in the selection of services and/or events, with the expectation that the SI will be used as the basis for a programme schedule (see D3, page 6, section 1). The SI comprises *inter alia* an Event Information Table (EIT) which contains data concerning events or programmes such as programme name, start time and duration (see D3, page 10).

The board concurs with the examining division that in view of the importance of the DVB standard, at least in Europe, the skilled person would have wanted to implement the system of D1 in compliance with the DVB standard.

The appellants argued that the skilled person would not have wanted to adapt the system of D1 to the DVB standard because the DVB standard already existed when D1 was filed.

The board is not convinced by this argument, because D1 was filed in the USA where the European DVB standard did not apply. However, there would have been a strong incentive for the skilled person to make the system of D1 compliant with the DVB standard for the European market.

The board is also not convinced by the appellants' argument that adapting the system of D1 to the DVB standard would have required a complete redesign. The system of D1 deals with digital television signals (see page 21, lines 8 to 13) but without limiting them to any specific digital format. The system of D1 could thus be readily adapted to comply with the specific format of the (digital) DVB standard. The appellants did not explain why this would require a complete redesign or pose technical difficulties to the skilled person.

In order to make the system of D1 compliant with the DVB standard, the broadcast programmes of D1 would have had to be transmitted in MPEG-2 transport streams (TS) comprising packets for the programmes and additional packets for Service Information containing the start time and duration of each programme (in the EIT of the SI of each programme).

It would then have been obvious for the skilled person to adapt Video Server 2.2 so that it obtained the "broadcast time" of a programme to be stored (see D1, page 21, line 17) from the EIT in the data stream, rather than by any other means. The DVB standard further specifies that the start time (broadcast time) in the EIT may be the actual start time (see D4, page 14, "NOTE 2").

The board also regards it as straightforward, in view of the suggestion in D3 (see page 6, section 1) that the Service Information should be used as the basis for an EPG, that the past programmes in the programme schedule stored in Programming Database 2.20, and transmitted on request to the subscribers, should also

be based on the broadcast times contained in the EIT of the Service Information transmitted with the "live" broadcasts, because this information is up-to-date and thus more accurate than the expected broadcast times previously stored in the programme schedule.

For the above reasons, the board regards the method of claim 1 of the main request as lacking an inventive step in view of D1 and the skilled person's common general knowledge of the DVB standard (the relevant parts of which are disclosed in D3 and D4).

8. Hence the appellants' main request is not allowable.

Auxiliary request - Inventive step (Article 56 EPC 1973)

9. Claim 1 of the auxiliary request differs from claim 1 of the main request essentially only in that the service information includes an individual event information table for each programme.

Since the event information table in the claims is indistinguishable from the Event Information Table (EIT) of the DVB standard (see D3, page 10), the above reasoning regarding claim 1 of the main request also applies to claim 1 of the auxiliary request.

10. Hence the appellants' auxiliary request is not allowable either.

Conclusion

11. Since neither of the appellants' requests is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

K. Boelicke F. Edlinger

Decision electronically authenticated