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**Datasheet for the decision  
of 9 June 2015**

**Case Number:** T 1830/10 - 3.5.04

**Application Number:** 04252751.5

**Publication Number:** 1478193

**IPC:** H04N17/00

**Language of the proceedings:** EN

**Title of invention:**  
Generation of test streams for testing digital TV software

**Applicant:**  
Samsung Electronics Co., Ltd.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 123(2)

**Keyword:**  
Amendments - added subject-matter (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
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Case Number: T 1830/10 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 9 June 2015**

**Appellant:** Samsung Electronics Co., Ltd.  
(Applicant) 129, Samsung-ro  
Yeongtong-gu  
Suwon-si, Gyeonggi-do, 443-742 (KR)

**Representative:** Walaski, Jan Filip  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 14 April 2010  
refusing European patent application  
No. 04252751.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** T. Karamanli  
**Members:** C. Kunzelmann  
M. Paci

## Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse European patent application No. 04 252 751.5 under Article 97(2) of the European Patent Convention (EPC).
- II. The application was refused on the grounds that the application did not meet the requirements of Article 83 EPC. Furthermore, "*notwithstanding this lack of disclosure*", the subject-matter of claim 1 of the sole request was found not to involve an inventive step (Article 56 EPC).
- III. Claim 1 of the sole request underlying the decision under appeal reads as follows:

"A method of generating a transport stream for use in testing digital television software, comprising: receiving test requirements specified by a user including;

- broadcast standard information;
- specification of a test scenario; and
- information specifying whether the test is to include other randomly-determined test scenarios necessary for the generation of test data;

generating an intermediate file in a first format by a process selected according to user input; and transforming the intermediate file into a transport stream in a second format according to the test requirements."

- IV. The examining division found that claim 1 contained a feature by which randomly-determined test scenarios were used to generate test data. It considered this feature to be disclosed on page 15, lines 14 to 18 of

the description as filed. With respect to Article 83 EPC, it found that the description did not disclose this feature in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. The examining division considered that the object of the randomly-determined test scenarios was to increase the test coverage. It found that the description did not disclose any means to calculate such test coverage or define a desired test coverage. Moreover, it found that the description did not provide any details on what should be randomised in the test scenario or how any given, increased, test coverage was achieved.

V. The applicant appealed the decision. In the statement of grounds of appeal, the appellant submitted arguments why it considered the reasons for the decision to be incorrect. It submitted that an advantage of the invention lay in the fact that a mode of operation was available in which both user-specified test data and randomly-selected test data could be combined in a single transport stream. This combined the coverage benefit of using purely random test data with the focus of being able to specify a particular aspect of operation to be tested in a single test data generation process. This hybrid operation was covered by the claim wording "whether the test is to include other randomly-determined test scenarios". Means for assessing test coverage could be implemented by the person skilled in the art in a relatively straightforward manner, so as to confirm that the coverage had actually increased through the use of the random test scenarios.

VI. The board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to a summons to oral

proceedings. In this communication the board indicated that the feature objected to by the examining division needed to be discussed at the oral proceedings for a number of reasons, *inter alia* in view of Article 123(2) EPC and Article 84 EPC 1973. In particular, the board set out the reasons why it doubted that claim 1 met the requirements of Article 123(2) EPC.

VII. By letter dated 18 March 2015 the appellant informed the board that it did not intend to attend the oral proceedings scheduled for 9 June 2015. It did not submit any observations on the issues raised in the board's communication.

VIII. Oral proceedings were held by the board on 9 June 2015 in the appellant's absence, in accordance with Rule 71(2) EPC 1973 and Article 15(3) RPBA. The Chair noted that the board interpreted the written submissions of the appellant as requesting that the decision under appeal be set aside and that a patent be granted on the basis of the claims underlying the decision under appeal. At the end of the oral proceedings the Chair announced the board's decision.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *Added subject-matter (Article 123(2) EPC)*
  - 2.1 The method according to claim 1 comprises a step of receiving test requirements specified by a user including a specification of a test scenario. The test requirements further include information specifying whether the test is to include other randomly-

- determined test scenarios necessary for the generation of test data.
- 2.2 Hence the user may specify a particular test scenario, and may in addition specify whether the test is to include other test scenarios. The other scenarios are randomly determined.
- 2.3 The decision under appeal considered that the randomly-determined test scenarios used to generate the test data were disclosed on page 15, lines 14 to 18 of the application as filed.
- 2.4 Indeed, the claims and drawings of the application as filed do not refer to randomly-determined test scenarios. The passage referred to in the decision under appeal is the only one referring to randomly determining other scenarios necessary for the generation of test data.
- 2.5 However, when read in context, the entire paragraph (page 15, lines 11 to 21) specifies seven distinct submenus of the "Project" menu 601 illustrated in figure 6. One sub-menu is "New Non-Random", another submenu is "New Random". Whereas the "New Non-Random" submenu is "for generating test data by establishing a scenario for generating test data using an input value specified by the user", the "New Random" submenu is "for generating test data by receiving only simple input from the user and randomly determining other scenarios necessary for the generation of test data in the tool".
- 2.6 Thus, from the user's perspective, these two submenus relate to mutually exclusive options: either a non-simple input value is necessary to permit

establishing a non-random scenario, or a simple input value is sufficient for determining random scenarios.

2.7 However, the application as filed does not directly and unambiguously specify a combination of these two options in the sense that the user may input two input values included in the test requirements, one which permits establishing a (specific) non-random scenario (the "test scenario" in claim 1) and a second one which specifies that the test is to include other scenarios (the "randomly-determined test scenarios" in claim 1).

2.8 The appellant did not submit any arguments in reaction to the board's communication, in which the above objections were raised. Moreover, the board notes that the appellant's arguments referring to a hybrid mode of operation in which both user-specified test data and randomly-selected test data can be combined in a single transport stream (see page 2 of the statement of grounds of appeal) did not identify a particular portion of the description in which such a hybrid mode of operation is disclosed.

2.9 In view of the above, claim 1 specifies a method which includes a combination of two options which is not directly and unambiguously derivable from the application as filed. Thus the board finds that claim 1 contains subject-matter which extends beyond the content of the application as filed. Therefore, claim 1 does not meet the requirements of Article 123(2) EPC.

3. For the above reasons, the decision under appeal cannot be set aside. Instead, the appeal is to be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

T. Karamanli

Decision electronically authenticated