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**Datasheet for the decision
of 22 April 2016**

Case Number: T 1081/11 - 3.5.04

Application Number: 04793461.7

Publication Number: 1712086

IPC: H04N7/52, H04N5/445

Language of the proceedings: EN

Title of invention:

RECORDING MEDIUM AND RECORDING AND REPRODUCING METHODS AND
APPARATUSES

Applicant:

LG Electronics Inc.

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



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Chambres de recours

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Case Number: T 1081/11 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 22 April 2016

Appellant: LG Electronics Inc.
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Seoul 150-721 (KR)

Representative: Vossius & Partner
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 8 April 2011
refusing European patent application
No. 04793461.7 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman C. Kunzelmann
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. 04793461.7 published as international patent application WO 2005/076633 A1.
- II. The decision under appeal was based on the grounds that claim 1 of each of the main and auxiliary requests did not meet the requirements of Article 123(2) EPC (added subject-matter). The examining division also observed in a section entitled "Further remarks not forming part of this decision" that the subject-matter of claim 1 according to each of the two requests did not involve an inventive step.
- III. With the statement of grounds of appeal the appellant filed amended claims 1 to 21, replacing all previous claims on file, and requested that the decision under appeal be set aside and that a patent be granted on the basis of these amended claims. As a precaution, the appellant also requested oral proceedings.
- IV. Claim 1 of the sole request filed with the statement of grounds of appeal reads as follows:

"A recording medium for reproduction of a text subtitle stream, comprising:

a data area storing a playlist including at least one playitem and at least one subplayitem, the playitem specifying a time based playing interval from in time until out time associated with at least one audio/video (AV) stream file including at least one audio/video (AV) stream and a first subplayitem including reproduction control information of text subtitle stream files including at least one text subtitle

stream, the text subtitle stream including a first segment and a second segment, the first segment including region style information including a default style to be applied to a text subtitle region by default, the second segment including text data to be displayed within the text subtitle region and inline style information to be applied to a specific portion of the text data which overrides the region style information,

wherein the first subplayitem for a reproduction of the text subtitle stream is synchronized with the playitem whereas a second subplayitem for a reproduction of a supplementary audio stream is not synchronized with the playitem."

- V. In a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536), annexed to the summons for oral proceedings, the board informed the appellant *inter alia* that claim 1 did not meet the requirements of Article 123(2) EPC because the feature "whereas a second subplayitem for a reproduction of a supplementary audio stream is not synchronized with the playitem", which was introduced into claim 1 with the statement of grounds of appeal, was not directly and unambiguously derivable from the application as filed.
- VI. By a letter dated 29 March 2016, the appellant withdrew its request for oral proceedings and informed the board that it did not intend to attend those scheduled for 22 April 2016. It did not submit any observations on the issues raised in the board's communication.
- VII. The board held oral proceedings on 22 April 2016. As announced, the duly summoned appellant did not attend. The Chairman noted that the appellant had requested

that the decision under appeal be set aside and that a patent be granted on the basis of the claims filed with the statement of grounds of appeal. At the end of the oral proceedings, the Chairman announced the board's decision.

Reasons for the Decision

1. The appeal is admissible.

Amendments - added subject-matter (Article 123(2) EPC)

2. Claim 1 filed with the statement of grounds of appeal includes the new expression "whereas a second subplayitem for a reproduction of a supplementary audio stream is not synchronized with the playitem".
3. The appellant submitted under point 3.2 of the statement of grounds that this new wording complied with Article 123(2) EPC because it was based on the passages on page 9, lines 13 to 19, and page 6, lines 15 to 18, of the application as filed.
4. As already explained in the communication under Article 15(1) RPBA, the board is of the view that the above wording does not meet the requirements of Article 123(2) EPC for the following reasons:

The passages of the application as filed referred to by the appellant disclose the following information:

(a) in addition to the main data which represent audio/video (AV) data, "supplementary data represent all other data associated with reproduction of the main data, examples of which are text subtitle streams, graphic streams, menu information, and supplementary

audio streams (e.g., for a browsable slideshow)" (see page 6, lines 15 to 18);

(b) a "SubPlayItem [...] is the basic reproduction control information of one or more text subtitle stream files" (see page 9, lines 13 to 15); and

(c) "when the SubPlayItem is used to reproduce a browsable slideshow, it may not be synchronized with the PlayItem(s)" (see page 9, lines 17 to 19).

The board notes that according to item (b) above a "subplayitem" relates to text subtitles. This appears to contradict the new feature of claim 1 stating that it relates to supplementary audio. Item (c) mentions that a subplayitem may be used to reproduce a "browsable slideshow", but neither defines the browsable slideshow nor explains how the subplayitem contributes to its reproduction. Item (a), which contains the only other mention of the browsable slideshow in the whole application as filed, provides little information as to the content of the browsable slideshow, because it is unclear whether the expression "e.g., for a browsable slideshow" refers to all the "text subtitle streams, graphic streams, menu information, and supplementary audio streams" or to only some of them.

In other words, it is unclear from items (a) and (c) what a browsable slideshow contains and for which part of it a subplayitem is used. The board does not regard it as implicit in items (a) and (c) that a subplayitem is used for the reproduction of a supplementary audio stream of a browsable slideshow, because it would contradict the definition of a subplayitem given in item (b).

For the above reasons, the board finds that it cannot be **directly and unambiguously derived** from the application as filed that a subplayitem is used "for a reproduction of a supplementary audio stream".

5. The appellant did not submit any arguments in reaction to the board's communication raising the above objections.
6. Hence, the board affirms its view expressed in the communication under Article 15(1) RPBA that the subject-matter of claim 1 according to the appellant's sole request extends beyond the content of the application as filed, and therefore does not comply with Article 123(2) EPC.
7. For the above reasons, the appellant's sole request is not allowable and the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

C. Kunzelmann

Decision electronically authenticated