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**Datasheet for the decision
of 15 May 2017**

Case Number: T 2233/11 - 3.5.04

Application Number: 04811384.9

Publication Number: 1683341

IPC: H04N7/173

Language of the proceedings: EN

Title of invention:

SYSTEM TO PROVIDE SET TOP BOX CONFIGURATION FOR CONTENT ON
DEMAND

Applicant:

NCube Corporation

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 2233/11 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 15 May 2017

Appellant: NCube Corporation
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Beaverton, OR 97006 (US)

Representative: Röthinger, Rainer
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 1 June 2011
refusing European patent application
No. 04811384.9 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. 04811384.9 published as international patent application WO 2005/050974 A2.
- II. The decision under appeal was a decision according to the state of the file, as requested by the appellant, referring for its reasons to two previous communications dated 2 December 2010 and 3 December 2009. In these communications, the examining division had raised objections based on Articles 54, 56 and 84 EPC.
- III. With the statement of grounds of appeal, the appellant re-filed the claims of the sole request underlying the decision under appeal as a main request and filed the claims of first to third auxiliary requests.
- 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 informed the appellant of its provisional opinion that *inter alia* claim 1 according to each of the main and first to third auxiliary requests did not meet the requirements of Article 123(2) EPC because the functional feature identified by the expression "by dividing the configuration information into smaller objects (1004, 1005, 1006), each of which is provided with an object header (1008; 1009; 1010) of the format" was not directly and unambiguously derivable from the application as filed.

V. In a letter of reply dated 28 April 2017, the appellant did not reply to the board's objections. Instead, it withdrew its request for oral proceedings.

VI. On 8 May 2017, the appellant informed the Registry of the board by telephone that it would not be attending the oral proceedings.

VII. The board held oral proceedings on 15 May 2017. As announced, the duly summoned appellant did not attend.

During the oral proceedings, the chairman noted that the appellant had requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request or, in the alternative, one of the first to third auxiliary requests, all requests filed with the statement of grounds of appeal.

At the end of the oral proceedings, the chairman announced the board's decision.

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

"A content on demand system (102) comprising:

logic to compose set top box configuration information (1002) into an audio and/or video stream format by dividing the configuration information into smaller objects (1004, 1005, 1006), each of which is provided with an object header (1008; 1009; 1010) of the format; and

logic to communicate the configuration information to a plurality of set top boxes (106, 108, 109), the configuration information affecting operational settings of the set top box."

IX. Claim 1 according to the appellant's **first auxiliary request** reads as follows:

"A content on demand system (102) comprising:

a network structure (104) adapted to communicate audio and/or video formatted streams comprising on-demand content;

logic to compose set top box configuration information (1002) into an audio and/or video stream format by dividing the configuration information into smaller objects (1004, 1005, 1006), each of which is provided with an object header (1008; 1009; 1010) of the format, wherein the streams also comprise the configuration information (1002); and

logic to communicate the configuration information to a plurality of set top boxes (106, 108, 109), the configuration information affecting operational settings of the set top box."

X. Claim 1 according to the appellant's **second auxiliary request** reads as follows:

"A content on demand system (102) comprising:

a server system (102) comprising logic to compose set top box configuration information (1002) into an audio and/or video stream format by dividing the configuration information into smaller objects (1004, 1005, 1006), each of which is provided with an object header (1008; 1009; 1010) of the format;

a network structure (104) adapted to communicate audio and/or video formatted streams comprising on-demand content, wherein the streams also comprise the configuration information (1002), wherein the network structure (104) comprises a plurality of service nodes (119) including logic to insert, in the communication

from the server system (102) to a plurality of set top boxes (106, 108, 109), a service group identifier for the set top boxes;

logic to communicate the configuration information to the plurality of set top boxes (106, 108, 109) via the plurality of service nodes, each of the service nodes further including logic to communicate the configuration information and the service group identifier to the plurality of set top boxes, the configuration information affecting operational settings of the set top box; and

logic to receive from a set top box a request for an audio and/or video stream, the request comprising the service group identifier for the set top box and an identifier of a title of the audio and/or video stream, and to communicate the audio and/or video stream to the service node corresponding to the service group identifier."

XI. Claim 1 according to the appellant's **third auxiliary request** reads as follows:

"A content on demand system (102) comprising:

a server system (102) comprising logic to compose set top box configuration information (1002) into an audio and/or video stream format by dividing the configuration information into smaller objects (1004, 1005, 1006), each of which is provided with an object header (1008; 1009; 1010) of the format;

a network structure (104) adapted to communicate audio and/or video formatted streams comprising on-demand content, wherein the streams also comprise the configuration information (1002), wherein the network structure (104) comprises a plurality of service nodes (119) including logic to insert, in the communication from the server system (102) to a plurality of set top

boxes (106, 108, 109), a service group identifier for the set top boxes;

logic to communicate the configuration information to the plurality of set top boxes (106, 108, 109) via the plurality of service nodes, each of the service nodes further including logic to communicate the configuration information and the service group identifier to the plurality of set top boxes, the configuration information affecting operational settings of the set top box;

logic to receive from a set top box a request for an audio and/or video stream, the request comprising the service group identifier for the set top box and an identifier of a title of the audio and/or video stream, and to communicate the audio and/or video stream to the service node corresponding to the service group identifier; and

logic to provide among the configuration information the service group identifier for a set top box and a channel and an alternate channel from which to retrieve a content index having the streamed audio and/or video format, and to communicate on the channel from which to retrieve the content index to allow a receiver to retrieve the content index, and to communicate on the alternate channel to allow a receiver to tune to the alternate channel when the channel from which to retrieve the content index comprises an indication of invalid data."

Reasons for the Decision

1. The appeal is admissible.

Non-attendance of the appellant at the oral proceedings

2. The duly summoned appellant did not attend the oral proceedings. According to Rule 71(2) EPC 1973, the proceedings could however continue without him. In accordance with Article 15(3) RPBA, the board relied for its decision only on the appellant's written submissions. The board was in a position to decide at the conclusion of the oral proceedings, since the case was ready for decision (Article 15(5) and (6) RPBA), and the voluntary absence of the appellant was not a reason for delaying the decision (Article 15(3) RPBA).

Main and first to third auxiliary requests - Article 123(2) EPC

3. It is established case law that Article 123(2) EPC requires that amendments to the parts of a European patent application relating to the disclosure (the description, claims and drawings) can only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from these parts of the application as filed (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, II.E.1).
4. Claim 1 according to each of the main and first to third auxiliary requests specifies the logic of the claimed system by means of a functional feature identified by the expression "by dividing the configuration information into smaller objects (1004,

1005, 1006), each of which is provided with an object header (1008; 1009; 1010) of the format".

5. The board considers that this feature cannot be derived directly and unambiguously from the application as filed for the following reasons:

The only portions of the application as filed which disclose a division into smaller objects are paragraphs [0068] and [0069] of the description and figure 10. However, in these portions it is "content metadata (1002)" which is divided, not "configuration information" as stated in claim 1.

The application as filed makes it clear that "configuration information" and "content metadata" are not the same. The former is defined in paragraph [0024] and the latter in paragraph [0025] as follows:

According to paragraph [0024] of the description, "configuration information" may include general configuration information (e.g. special-purpose channels, channel names, and IP address and port numbers for communicating with the server system 102), and configuration information that is specific to one or more groups of set top boxes (e.g. local program options).

In contrast, according to paragraph [0025] of the description, "content metadata" may include information about content categories (e.g. horror, documentary, comedy, etc.), and information about audio and/or video titles (e. g. movie titles, movie length, movie description, leading actors, etc. , as well as ads, logos, and other graphics.).

Moreover, another difference is that "configuration information" is transmitted in channel 333 of figure 3, whereas "content metadata" is transmitted in channels 323-325 and alternate channels 327-329 of figure 3.

As a result, it is not directly and unambiguously derivable from the application as filed that "configuration information" is divided into smaller objects, each of which provided with an object header.

Hence claim 1 according to each of the main and first to third auxiliary requests does not comply with the requirements of Article 123(2) EPC.

6. The appellant did not submit any argument in reply to the objections under Article 123(2) EPC raised by the board in the communication under Article 15(1) RPBA annexed to the summons to oral proceedings.
7. For the above reasons, the main and first to third auxiliary requests are not allowable.

Conclusion

8. Since none of the appellant's 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

C. Kunzelmann

Decision electronically authenticated