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Datasheet for the decision of 7 May 2015

Case Number: T 0090/12 - 3.5.04

Application Number: 05015129.9

Publication Number: 1617579

IPC: H04N7/16, H04H1/00, H04M1/725, H04L29/06

Language of the proceedings: EN

Title of invention:
Broadcasting system and method for transmitting a broadcasting program to a mobile terminal

Applicant:
LG Electronics, Inc.

Headword:

Relevant legal provisions:
EPC 1973 Art. 84

Keyword:
Claims - clarity (no)

Decisions cited:

Catchword:

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Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0090/12 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 7 May 2015

Appellant: (Applicant)	LG Electronics, Inc. 20, Yoido-Dong, Yongdungpo-gu Seoul (KR)
Representative:	Zech, Stefan Markus Meissner, Bolte & Partner GbR Postfach 10 26 05 86016 Augsburg (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 3 August 2011 refusing European patent application No. 05015129.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman	T. Karamanli
Members:	R. Gerdes
	M. Paci

Summary of Facts and Submissions

I. The appeal is directed against the decision to refuse European patent application No. 05 015 129.9, published as European patent application EP 1 617 579 A2.

II. The patent application was refused by the examining division on the grounds that the independent claims of the main request did not comply with Article 84 EPC and that the subject-matter of all claims did not involve an inventive step (Article 56 EPC). The auxiliary request filed during the oral proceedings before the examining division was not admitted into the proceedings pursuant to Rules 116(1) and 137(3) EPC because the amendments made to claim 1 did not overcome the objections based on Article 56 EPC.

III. The applicant appealed against this decision and with the statement of grounds of appeal submitted two sets of amended claims according to a main request and an auxiliary request, replacing all previous claims on file.

IV. In a communication under Article 15(1) RPBA annexed to the summons to oral proceedings the board stated that it was not convinced that the subject-matter of any of the claims of either requests involved an inventive step. It also raised several objections under Article 84 EPC 1973 and Article 123(2) EPC, *inter alia* that it was not clear in claim 1 of each request how the expression "an alternative transmission of data" should be understood.

V. With a letter of reply dated 27 March 2015 the appellant submitted six sets of amended claims according to a main request and first to fifth

auxiliary requests, replacing all previous claims on file. The appellant addressed some of the objections raised in the board's communication but not that of lack of clarity of the expression "an alternative transmission of data", except in the fifth auxiliary request where the independent claims used the wording "alternatively received data" instead. The appellant did not explain why it considered that this new wording overcame the board's objection.

The appellant presented the following requests:

"1. as Main Request, to reverse the Decision of the Examining Division and to grant a European patent on the basis of the amended claims 1 to 21 filed herewith as Main Request;

2. as First Auxiliary Request, to reverse the Decision of the Examining Division and to grant a European patent on the basis of the amended claims 1 to 21 filed herewith as Auxiliary Request I;

3. as Second Auxiliary Request, to reverse the Decision of the Examining Division and to grant a European patent on the basis of the amended claims 1 to 21 filed herewith as Auxiliary Request II;

4. as Third Auxiliary Request, to reverse the Decision of the Examining Division and to grant a European patent on the basis of the amended claims 1 to 21 filed herewith as Auxiliary Request III;

5. as Fourth Auxiliary Request, to reverse the Decision of the Examining Division and to grant a European patent on the basis of the amended claims 1 to 21 filed herewith as Auxiliary Request IV; and

6. as Fifth Auxiliary Request, to reverse the Decision of the Examining Division and to grant a European patent on the basis of the amended claims 1 to 17 filed herewith as Auxiliary Request V."

VI. Claim 1 of the main request and claim 1 of the first auxiliary request read as follows:

"A method of controlling a reception of a broadcasting program, comprising the steps of:
selecting a broadcasting program through a mobile terminal (100), wherein the broadcasting program is comprised of at least one broadcasting program component;
selecting at least one broadcasting program component through the mobile terminal (100), wherein the selected broadcasting program component is a broadcasting type that corresponds to one of video data, audio data, and text data;
selectively receiving the selected broadcasting program component from a broadcasting station server to the mobile terminal;
outputting the received broadcasting program component on the mobile terminal; and
interrupting the output of the received broadcasting program component with a time shift function of the mobile terminal, the time shift function permitting an alternative transmission of data to be monitored by a user of the mobile terminal (100) instead of the received broadcasting program component of the selected broadcasted program."

VII. Claim 1 of the second auxiliary request is worded as follows:

"A method of controlling a broadcasting system, comprising the steps of:
selecting a broadcasting program through a mobile terminal (100);
selecting a broadcasting type through the mobile terminal (100), wherein the broadcasting type corresponds to one of video data, audio data, and text data;
selectively transmitting the selected broadcasting type from a broadcasting station server to the mobile terminal;
outputting the transmitted broadcasting type on the mobile terminal; and
interrupting the output of the transmitted broadcasting type with a time shift function of the mobile terminal, the time shift function permitting an alternative transmission of data to be observed by a user of the mobile terminal (100) instead of the received broadcasting type of the selected broadcasted program."

VIII. Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in the second selecting step, which reads (difference is indicated in bold by the board):

"... selecting, **by a user**, a broadcasting type through the mobile terminal (100); ...".

IX. Claim 1 of the fourth auxiliary request contains the following amendments when compared to claim 1 of the third auxiliary request (amendments indicated in bold by the board):

"... selectively transmitting the selected broadcasting type from a broadcasting station server to the mobile terminal **to reduce data size of the broadcasting**

program transmitted to the mobile terminal (100);
outputting the transmitted broadcasting type on the mobile terminal; and
...".

X. Claim 1 of the fifth auxiliary request reads as follows:

"A method of controlling a broadcasting system, the method comprising:
selecting a broadcast program through a mobile terminal (100);
selecting a broadcasting type of the broadcasting program through the mobile terminal (100), the broadcasting type being selected from at least two of video data broadcasting, audio data broadcasting and text data broadcasting;
receiving at the mobile terminal at least one of video data, audio data, and text data of the broadcasting program, the broadcasting program data being selectively transmitted from a broadcasting station server according to the selected broadcasting type;
outputting the received broadcasting program data through the mobile terminal;
selectively interrupting the output of the broadcasting program data using a time-shift function of the mobile terminal, the time-shift function enabling alternatively received data to be output through the mobile terminal while the broadcasting program data being transmitted from the broadcasting station server is time-shifted according to the time-shift function using a storage medium provided to the broadcasting station server; and
selectively continuing the output of the broadcasting program data through the mobile terminal by causing the data transmission from the broadcasting station server

to continue, the continuing data transmission beginning from a point of data transmission corresponding to the interruption."

XI. Oral proceedings took place before the board on 7 May 2015. As announced beforehand, the appellant was not represented at them. The oral proceedings were thus held in the absence of the duly summoned appellant.

Reasons for the Decision

1. The appeal is admissible.

Clarity (Article 84 EPC 1973)

2. According to Article 84 EPC 1973, the claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

2.1 The application relates to a method and system for providing a broadcasting program to a mobile terminal, such as a mobile phone. In order to avoid data overload at the mobile phone, a user may selectively request the transmission of only a video signal, an audio signal or a data/text signal consisting of supplementary information such as subtitles.

In addition, the mobile phone is provided with a time-shift function that allows a user to select a time-shift key while viewing the broadcast content. According to the application, "last displayed video data, text data and/or audio data of the broadcasting program" is stored when the key is pressed. Playback may be later resumed from that "stored image, text

and/or audio data". Display of broadcast content may be interrupted due to an incoming telephone call or the receipt of an SMS (see paragraphs [0002] to [0014], [0029], [0030], [0041] and [0044] of the application as originally filed).

2.2 Claim 1 of the **main request** specifies a method of controlling reception of a broadcasting program, comprising the step of "interrupting the output of the received broadcasting program component with a time shift function of the mobile terminal, the time shift function permitting **an alternative transmission of data** to be monitored by a user of the mobile terminal (100) instead of the received broadcasting program component of the selected broadcasted program" (emphasis added by the board).

2.3 In its communication annexed to the summons to oral proceedings (under point 3.3), the board took the preliminary view that the expression "an alternative transmission of data" was unclear because it could be understood in two different ways: (1) in the sense that the time-shift function enables a user to observe (video, audio or text) data transmitted via an alternative transmission path following the activation of the time-shift function; or (2) in the sense that (see paragraphs [0004] and [0042] of the application as filed) a telephone call or an SMS might be answered by the user before display of the selected broadcasting program is continued, the telephone call or SMS being regarded as the "alternative transmission of data". Hence, the expression allowed two different interpretations, which were both technically reasonable in the context of the application.

2.4 In its letter of 27 March 2015 the appellant did not submit any argument regarding the above clarity objection, and the board sees no reason to deviate from its opinion expressed in the annex to the summons to oral proceedings.

2.5 For the above reasons, claim 1 of the appellant's main request does not meet the requirements of Article 84 EPC 1973.

3. Claim 1 of each of the **first to fourth auxiliary requests** likewise refers to "an alternative transmission of data". The further modifications made to these claims do not affect the different technically reasonable interpretations of this expression as explained above (see point 2.3). Hence, these claims are unclear for the same reasons as claim 1 according to the main request.

4. In claim 1 according to the **fifth auxiliary request** the interrupting step has been reworded to read as follows: "... selectively interrupting the output of the broadcasting program data using a time-shift function of the mobile terminal, the time-shift function enabling **alternatively received data** to be output through the mobile terminal while the broadcasting program data being transmitted from the broadcasting station server is time-shifted according to the time-shift function using a storage medium provided to the broadcasting station server ..." (emphasis added by the board).

4.1 The board regards the expression in boldface as a paraphrase of the expression "an alternative transmission of data" used in claim 1 of each of the higher-ranking requests. The context of this expression

also does not help to resolve the ambiguity of the expression as set out above (see point 2.3). In particular, the reference to "the time-shift function using a storage medium provided by the broadcasting station server" could be understood to imply that the (video, audio or text) data are stored centrally, to be subsequently transmitted and received via the mobile phone using an alternative transmission path.

4.2 The appellant has provided no argument as to why replacing "an alternative transmission of data" with "alternatively received data" in claim 1 overcomes the board's objection of lack of clarity (see section 5 of the appellant's letter of 27 March 2015).

4.3 Hence, claim 1 of the fifth auxiliary request lacks clarity (Article 84 EPC 1973).

5. 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 Chairwoman:

K. Boelicke T. Karamanli

Decision electronically authenticated