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**Datasheet for the decision
of 20 May 2014**

Case Number: T 0529/12 - 3.5.04

Application Number: 06731934.3

Publication Number: 1872335

IPC: G06T11/60, G06T7/00, H04N1/387

Language of the proceedings: EN

Title of invention:
ALBUM CREATING APPARATUS, ALBUM CREATING METHOD AND PROGRAM

Applicant:
FUJIFILM Corporation

Headword:

Relevant legal provisions:
EPC 1973 Art. 84

Keyword:
Claims - clarity (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0529/12 - 3.5.04

**D E C I S I O N
of Technical Board of Appeal 3.5.04
of 20 May 2014**

Appellant: FUJIFILM Corporation
(Applicant) 26-30, Nishiazabu 2-chome
Minato-ku
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Representative: Klunker/Schmitt-Nilson/Hirsch
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 7 September
2011 refusing European patent application
No. 06731934.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman F. Edlinger
Members: R. Gerdes
C. Vallet

Summary of Facts and Submissions

- I. The appeal is directed against the decision to refuse European patent application No. 06 731 934.3, published as international application WO 2006/109879 A1.
- II. The patent application was refused by the examining division on the grounds that claims 1 and 12 of the main request and the first auxiliary request, as well as claims 1 and 10 of the second auxiliary request, did not comply with Article 84 EPC.
- III. The applicant appealed against this decision and with the statement of grounds of appeal submitted a set of new claims 1 to 13 "intended to replace all claims previously on file".
- IV. With a letter dated 15 April 2014 in response to a communication annexed to a summons to oral proceedings, the appellant submitted new claims 1 to 13 replacing the claims on file.
- V. Oral proceedings were held before the board on 20 May 2014. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request filed with letter of 15 April 2014, or in the alternative, on the basis of the claims of the auxiliary request submitted in the oral proceedings before the board.
- VI. Claim 1 of the main request reads as follows:

"An album creating apparatus (100) adapted to create an album including an image, comprising:
an image color analyzing section (260) including

i) a main subject determining section (232) adapted to determine a main subject of the image;

ii) a color extraction section (262) adapted to extract a plurality of colors included in the image region other than the main subject; and

iii) an appearance frequency of color calculating section (264) adapted to calculate the appearance frequency of each of the plurality of colors extracted by the color extraction section (262);

an album color determining section (270) adapted to determine a color to be used for a region other than the image in the album including the image based on the result of analysis of the image color analyzing section,

wherein the album color determining section (270) includes:

a characteristic color determining section (274) adapted to determine a characteristic color in the image region other than the main subject based on the calculated appearance frequency of the plurality of colors;

an album color selecting section (276) adapted to select a color to be used for the album in the region other than the image in the album including the image based on the characteristic color determined by the characteristic color determining section (274); and

an average appearance frequency information storage section (272) adapted to previously store an average appearance frequency indicative of the average frequency at which each of the plurality of colors can appear in images, wherein

the characteristic color determining section (274) is adapted to determine that a color of which the ratio of the appearance frequency calculated by the appearance frequency of color calculating section (264) to the average appearance frequency stored in the average

frequency appearance information storage section (272) is largest is the characteristic color in the image region other than the main subject."

- VII. Claim 1 of the auxiliary request differs from claim 1 of the main request in that references to "the image" or "images" in claim 1 of the main request have been amended as follows (amendments marked in boldface by the board):

"An album creating apparatus (100) adapted to create an album including **plural** images",

"i) a main subject determining section (232) adapted to determine a main subject of **one** image **of said plural images;**" and

"an average appearance frequency information storage section (272) adapted to previously store an average appearance frequency indicative of the average frequency at which each of the plurality of colors can appear in **the** images".

- VIII. The appellant's arguments with respect to the objection regarding lack of clarity of the expression "average appearance frequency" may be summarised as follows:

The average appearance frequency was "an information prepared and stored in advance" and was "based on a plurality of images". It indicated the average appearance frequency "at which each of the plurality of colors can appear in the image" (see statement of grounds, page 3/4, third paragraph). It had been clarified in the independent claims according to the main request that the average appearance frequency was indicative of the average frequency at which each of

the plurality of colours "can appear in the image (an image; images)" (see letter of reply dated 15 April 2014; page 2, paragraph 5). Based on paragraphs [0010], [0051], [0052], [0075], [0076], [0079] and [0080] the skilled person would have understood that the images in an album were used for determining the average appearance frequency "previously", i.e. before the determination of the appearance frequencies for individual colours in the background of the main image. The mean value of the Gaussian distributions in figure 5 represented the average appearance frequency for a range of colours. The independent claims of the first auxiliary request specified explicitly that plural images included in the album were used to calculate the average appearance frequency.

Reasons for the Decision

1. The appeal is admissible.

Main request

2. Under 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 an apparatus and a corresponding method and program for creating an album having album colours visually harmonised with colours of images stored in the album. In particular, colours of objects other than a main image - such as the title of the album, illustration objects, frames used to enhance the images and the background of the album - are adapted to match colours of images in the album.

These objects are collectively referred to below as background objects.

According to the invention, one image is selected as a main image of the album. A main subject of this image, such as a person in the foreground of the image, is determined and appearance frequencies of colours in the background of the main subject are calculated. A ratio of each of these appearance frequencies to an average appearance frequency for that colour is determined. The colour corresponding to the largest ratio is selected as the characteristic colour of the album. This characteristic colour is subsequently used as a basis for selecting the background colours of the album (see paragraphs [0004] to [0007], [0041] to [0043], [0047] to [0052] and [0088] to [0091] as well as figures 1, 2, 4, 5 and 8).

- 2.2 As a result of the above algorithm, the characteristic colour - and as a consequence the colour of the background objects - depends to a large extent on the value of the average appearance frequency. It is therefore essential for the selection of the album colours how the average appearance frequency is determined.
- 2.3 Claim 1 specifies that the album creating apparatus comprises "an average appearance frequency information storage section (272) adapted to previously store an average appearance frequency indicative of the average frequency at which each of the plurality of colors can appear in images". Further properties of the average appearance frequency cannot be inferred from claim 1. Due to the indeterminate reference to "images" in the above specification, the average appearance frequency could be indicative of colours in images totally

unrelated to the album. As further alternatives, the average appearance frequency could be computed based on particular images of beach or countryside scenes which are comprised in the album, or from images manually selected by a user. It follows that - depending on the selected images - the average appearance frequency of claim 1 can take arbitrary values that do not make it possible to determine which effects will be achieved by the calculation of the characteristic colour on the basis of the average appearance frequency. Hence, the specification of the average appearance frequency in claim 1 is unclear.

2.4 The appellant's arguments did not convince the board. Contrary to the appellant's assertion, it cannot be deduced from claim 1 that images in the album are used for determining the average appearance frequency. However, even if it were accepted that the skilled person would understand claim 1 in that sense, images of an album may pertain to different scenes, so that different sets of images yield results diverging substantially from one another as regards their average appearance frequency. Hence, the characteristic colour varies in an arbitrary way depending on the choice of images which are used to determine the average appearance frequency.

2.5 It follows from the above that claim 1 of the appellant's main request does not meet the requirements of Article 84 EPC 1973.

Auxiliary request

3. With respect to the average appearance frequency, claim 1 of the auxiliary request specifies additionally that "**plural images**" are comprised in the album and that the average appearance frequency is "indicative of the average frequency at which each of the plurality of colors can appear in **the** images" (amendments highlighted in boldface by the board).
- 3.1 This amendment fails to clarify how the average appearance frequency is determined. As set out above, images of an album may pertain to different scenes, so that the choice of images selected from an album may substantially affect the value of the average appearance frequency. As a result, the characteristic colour varies in an arbitrary way depending on the selected set of images.
- 3.2 It follows that claim 1 according to the first auxiliary request does not comply with the requirement of clarity (Article 84 EPC 1973).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

F. Edlinger

Decision electronically authenticated