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**Datasheet for the decision
of 17 May 2017**

Case Number: T 0584/12 - 3.5.04

Application Number: 04019721.2

Publication Number: 1517547

IPC: H04N5/445

Language of the proceedings: EN

Title of invention:

Full scale video picture with overlaid graphical user interface
and reduced image

Applicant:

Microsoft Technology Licensing, LLC

Headword:

Relevant legal provisions:

EPC 1973 Art. 84
RPBA Art. 13(1)

Keyword:

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 0584/12 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 17 May 2017

Appellant: Microsoft Technology Licensing, LLC
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 28 October 2011
refusing European patent application
No. 04019721.2 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman C. Kunzelmann
Members: B. Willems
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division refusing European patent application No. 04019721.2 published as EP 1 517 547 A2.
- II. In the decision under appeal *inter alia* the following documents were cited:
- D1: WO 95/01056 A1
D3: US 6 310 655 B1
D4: US 6 577 350 B1.
- III. The application was refused on the grounds that the subject-matter of the independent claims of the main request and the subject-matter of claim 1 of both the first and second auxiliary requests lacked inventive step with respect to the disclosure of documents D1, D3 and D4 (Article 56 EPC 1973) and that claim 1 of the third auxiliary request did not meet the requirements of Article 84 EPC 1973.
- IV. With the statement of grounds of appeal the appellant (applicant) filed claims according to a main request and first to third auxiliary requests and submitted reasons why the subject-matter of the claims was considered to involve an inventive step.
- 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 to oral proceedings, the board introduced the following documents into the appeal proceedings:
- D6: US 6 323 911 B1
D7: US 5 798 785 A,

D6 being a document cited by the appellant in parallel proceedings before the USPTO.

The board informed the appellant of its provisional opinion that:

- the subject-matter of claims 1 and 42 of the main request, claim 5 of the first auxiliary request and claim 4 of the second auxiliary request lacked novelty with respect to the disclosure of D6 (Article 54 EPC 1973);
- the subject-matter of claim 5 of the main request lacked an inventive step with respect to the combination of the disclosures of D6 and D3 (Article 56 EPC 1973);
- the subject-matter of claims 1, 17 and 23 of the first auxiliary request, claims 1, 15 and 21 of the second auxiliary request and claims 6 and 12 of the third auxiliary request lacked an inventive step with respect to the combination of the disclosures of D6 and D7 (Article 56 EPC 1973);
- claim 12 of the first auxiliary request, claim 10 of the second auxiliary request and claim 1 of the third auxiliary request did not meet the requirements of Article 84 EPC 1973; and
- claim 1 of the first to third auxiliary requests as well as claim 12 of the first auxiliary request and claim 10 of the second auxiliary request on file did not meet the requirements of Article 123(2) EPC.

VI. With a letter of reply dated 13 April 2017, the appellant filed amended claims 1 to 27 according to a main request and amended claims 1 to 16 according to an auxiliary request, both requests replacing all the previous requests on file. The appellant provided arguments why the amended claims according to the new main request and the new auxiliary request were considered to meet the requirements of Article 123(2) EPC, but did not provide any comments on the objections raised under Articles 54, 56 and 84 EPC 1973.

VII. The board held oral proceedings on 17 May 2017. The appellant was represented.

The appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims according to the main request or the auxiliary request, both requests filed with the letter dated 13 April 2017.

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

VIII. Claim 12 of the main request request reads as follows:

"A method comprising:
receiving (505) a video stream;
splitting the received video stream to create a first video stream of full scale images and a second video stream of visually similar, but reduced scaled images;
determining (515) whether the two video streams should be synchronized;
if the streams need not be synchronized, outputting (520) the first video stream of full scale images and the second video stream of reduced scaled images along with a graphical user interface, wherein the scaled

images and graphical user interface are overlaid onto the full scale images;
if the streams need to be synchronized, synchronizing the first video stream of full scale images and the second video stream of reduced scale images, and outputting (520) the first video stream of full scale images and the second video stream of reduced scale images along with a graphical user interface, wherein the scaled images and graphical user interface are overlaid onto the full scale images".

Claim 1 of the auxiliary request differs from claim 12 of the main request in that the former consistently refers to "reduced scale images" rather than "reduced scaled images" [emphasis added].

IX. The examining division's reasons for the decision under appeal which are relevant to the present decision may be summarised as follows:

Claim 1 of the then third auxiliary request lacked clarity because "*it is not specified under which circumstances the synchronization is required, and what is the actual purpose of the delay considered therein*" (see section 8 of the decision under appeal).

X. The appellant's arguments as to clarity may be summarised as follows:

(a) Although the claims might be broad, the skilled person would have had no difficulties in understanding that on the basis of system parameters which are not specified further it should be determined whether synchronisation of the streams was required.

(b) The objection raised by the examining division was mainly based on the purpose of the delay. This objection had been addressed, because any reference to a delay had been deleted in the present claims.

(c) Synchronisation of the streams was not to be understood as synchronisation on a bitstream or frame level, but was to be interpreted broadly as a user perceived synchronisation between the display of the contents of the full scale image and the contents of the reduced scale image.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request and auxiliary request - admission into the appeal proceedings (Article 13(1) RPBA)*
 - 2.1 Under Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal may be admitted and considered at the Board's discretion.
 - 2.2 The board accepts that the appellant filed its requests with the letter dated 13 April 2017 as a reaction to the board's communication annexed to the summons to oral proceedings.
 - 2.3 Therefore, the board, exercising its discretion under Article 13(1) RPBA, decided to admit the main request and the auxiliary request into the appeal proceedings.

3. *Main request and auxiliary request - clarity*
(Article 84 EPC 1973)

3.1 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.

3.2 Claim 12 of the main request and claim 1 of the auxiliary request specify:

"determining whether the two video streams should be synchronized".

3.3 The claims do not specify how it should be determined whether the streams should be synchronised. Moreover, they do not specify what is meant by *"synchronizing"* streams. They do not specify whether, for instance, the bitstreams should be synchronised or the beginning of frames in the streams should be synchronised. Reading the claim in conjunction with the description, doubts arise whether the stream of the full scale image should be *"synchronized"* with the stream of the reduced scale image or whether the full scale image and the corresponding reduced scale image with the same content should be displayed at the same time.

3.4 The board is not convinced by the appellant's arguments.

3.4.1 The board is not persuaded that the claims are merely broad and that the person skilled in the art could imagine a number of system parameters to be taken into account for the synchronisation. The fact that the nature of the synchronisation as such is not clear confronts the person skilled in the art with the

insurmountable problem of identifying a possible criterion for determining whether the streams should be synchronised. The appellant deduced from paragraph [0049] of the published application ("*At block 515, a determination is made whether the two video streams are to be synchronized. When block 505 or block 510 occurs, or some other process involving one and/or both of the video streams, one stream may be delayed relative to the other*") in conjunction with Figure 5 that, for instance, at the server one stream is to be delayed with respect to the other stream to compensate for the difference in the time it may need to compress the respective video streams. The board observes that such compensation would completely ignore any difference in the time needed for transmitting the streams or in the time needed to process the streams at the client. The board is not satisfied that the entity determining whether the streams have to be synchronised has knowledge of all possible factors affecting the perceived "*synchronization*" of the streams, i.e. that the system could grasp all factors causing a lag between the display of corresponding images and would be able to disregard those factors for which the lag would not be disturbing to the viewer. The application only broadly outlines that one stream might have to be delayed at the client or the server to compensate for the time needed for splitting or compressing the streams (see paragraph [0049]). Moreover, "*splitting*" typically encompasses demultiplexing a TDM stream with full scale and reduced scale images into one stream with full scale images and one stream with reduced scale images. Unless specific measures were taken (such as clock synchronisation or adding time stamps), these streams would not be synchronised, neither in the sense of bitstream or frame synchronisation nor in the sense that corresponding full and reduced scale images would

be displayed at the same time. This implies that it is always necessary to "synchronize" the streams and reinforces the doubts whether it is clear how it should be determined that the streams should be synchronised.

- 3.4.2 The appellant's argument that "synchronization" of the streams is not to be taken literally, i.e. is not to be interpreted as synchronisation at bitstream or frame level, but should be understood as displaying similar images at the same time, seems to be based on the disclosure of paragraph [0035] of the published application that "*A synchronizer component 335 may be used to synchronize images of the compressed video stream along with images of the uncompressed (full scale) video stream. The synchronizer component 335 provides that the same images, one scaled and the other full scale, are displayed at the same time*" [emphasis added]. However, paragraph [0051] of the published application ("*the video streams are synchronized in order for the same images to be streamed and presented with one another*") is based on the assumption that a direct link exists between the synchronisation of the streams and the concurrent display of the images. Thus, the application as a whole gives the impression that "*synchronizing*" the streams results in displaying images with similar contents at the same time. However, a synchronisation at bitstream level or frame level does not necessarily provide similar contents at temporally corresponding points of the streams (i.e. at the same lapse of time after the start of the streams) and does not necessarily result in displaying images with similar contents at the same time. As already mentioned in point 3.4.1, this would require additional measures, such as the inclusion of (presentation) time stamps.

3.5 It follows from the above that claim 12 of the main request and claim 1 of the auxiliary request do not meet the requirements of Article 84 EPC 1973.

4. Since neither 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