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**Datasheet for the decision
of 5 July 2018**

Case Number: T 0831/12 - 3.5.04

Application Number: 03256946.9

Publication Number: 1416728

IPC: H04N5/445, H04N7/52, H04N5/60

Language of the proceedings: EN

Title of invention:
Language selection in digital broadcasting receiver

Patent Proprietor:
Samsung Electronics Co., Ltd.

Opponent:
Interessengemeinschaft für
Rundfunkschutzrechte e.V.

Headword:

Relevant legal provisions:
EPC 1973 Art. 100(c), 84
EPC Art. 123(2)
RPBA Art. 12(4)

Keyword:

Amendments - main request and first, second and seventh
auxiliary requests - added subject-matter (yes)
Late-filed request - third, fourth, fifth and sixth auxiliary
requests - request could have been filed in first instance
proceedings (yes)
Clarity - eighth auxiliary request (no)

Decisions cited:

G 0003/89, G 0011/91, G 0002/10

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0831/12 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 5 July 2018

Appellant: Samsung Electronics Co., Ltd.
(Patent Proprietor) 129, Samsung-ro
Yeongtong-gu
Suwon-si, Gyeonggi-do, 443-742 (KR)

Representative: Taor, Simon Edward William
Venner Shipley LLP
200 Aldersgate
London EC1A 4HD (GB)

Respondent: Interessengemeinschaft für
(Opponent) Rundfunkschutzrechte e.V.
Bahnstraße 62
40210 Düsseldorf (DE)

Representative: Pröll, Jürgen
Die Patenterie GbR
Patent- und Rechtsanwaltssozietät
Leibnizstraße 6
95447 Bayreuth (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 1 December 2011
revoking European patent No. 1416728 pursuant to
Articles 101(2) and 101(3)(b) 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 opposition division posted on 1 December 2011 revoking European patent No. 1 416 728 pursuant to Articles 101(2) and 101(3)(b) EPC. The patent is based on European patent application No. 03256946.9.
- II. Notice of opposition to the patent was filed by the Interessengemeinschaft für Rundfunkschutzrechte e.V. (hereinafter: the respondent). The opposition was based on the grounds for opposition under Article 100(a) and (c) EPC.
- III. The patent was revoked on the grounds that the subject-matter of the claims of the patent proprietor's main and first, third and fourth auxiliary requests extended beyond the disclosure of the application as filed. The patent proprietor's second auxiliary request was not admitted into the opposition proceedings.
- IV. The patent proprietor (hereinafter: the appellant) filed notice of appeal against the opposition division's decision. In its statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and the opposition rejected (as a main request), or in the alternative that the patent be maintained in amended form on the basis of the claims of one of the first to eighth auxiliary requests filed with its statement of grounds of appeal. It submitted arguments as to why these requests overcame the objections raised in the decision under appeal.
- V. The respondent filed a reply to the appeal and requested that the appeal be dismissed. It submitted reasons as to why the subject-matter of claim 1 of all

the appellant's requests apart from the third auxiliary request extended beyond the disclosure of the application as filed (Article 100(c) or 123(2) EPC), why claim 1 of the first and third auxiliary requests had been amended in such a way as to extend the protection the patent conferred (Article 123(3) EPC), and why claim 1 of the second auxiliary request did not meet the requirements of Article 84 EPC. The respondent mentioned document D2 (WO97/46010) and raised the objection that the subject-matter of claim 1 of all requests apart from the sixth auxiliary request lacked inventive step over the disclosure of D2 or the combined disclosures of D1 (US2002/0044222 A1) and D2 (Article 56 EPC).

VI. The board issued a summons to oral proceedings. In a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536) annexed to the summons, the board indicated that it would have to be discussed *inter alia* whether:

(a) the application as filed directly and unambiguously disclosed the update specified in claim 1 of the main and first, second, seventh and eighth auxiliary requests; and

(b) the third, fourth, fifth and sixth auxiliary requests should be admitted into the proceedings (Article 12(4) RPBA).

VII. With a letter dated 8 June 2018, the respondent informed the board that it would not be attending the oral proceedings.

VIII. Oral proceedings before the board were held on 5 July 2018 in the absence of the duly summoned respondent.

During the oral proceedings, the appellant in essence reiterated the arguments set out in the written proceedings as to why the subject-matter of claim 1 of the main and first, second, seventh and eighth auxiliary requests did not extend beyond the disclosure of the application as filed. Further, it provided reasons as to why the third to sixth auxiliary requests should be admitted into the appeal proceedings and why claim 1 of the eighth auxiliary request met the requirements of Article 84 EPC.

The appellant confirmed its final requests as follows: it requested that the decision under appeal be set aside and the opposition rejected (as a main request), or in the alternative that the patent be maintained in amended form on the basis of the claims of one of the first to eighth auxiliary requests filed with the statement of grounds of appeal.

The chairman noted that the respondent had requested in writing that the appeal be dismissed.

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

IX. Claim 1 of the main request reads as follows:

"A method of setting the audio output language of a digital broadcasting receiver, receiving a data stream comprising a video stream, a plurality of associated audio streams, each of said audio streams being in a

different language, and a PMT signal containing a list of the audio streams associated with the video stream and language descriptor data for each of the audio streams, the method comprising:

updating a PMT according to changes in the PMT signal;
and

performing a user-controlled audio output language selection process,

characterised in that, following selection of a new language, the language information, used for display of an audio language selection menu in the user-controlled audio output language selection process, is updated, if it is detected that the PMT has been updated since said language information was last set."

X. The characterising portion of claim 1 of the first auxiliary request reads as follows:

"characterised in that, while an audio language selection menu is displayed, the language information, used for display of the audio language selection menu in the user-controlled audio output language selection process, is updated, if it is detected that the PMT has been updated since said language information was last set."

XI. In comparison with claim 1 of the main request, claim 1 of the second auxiliary request further specifies:

"wherein the method includes the operations of:

changing a set audio language, set to be reproduced by a receiver, in response to an audio language selection button being pressed;

checking whether audio language information of a data stream changes as a PMT of the data stream is updated;

updating the set audio language if there is a change;
and

displaying available audio indices reflecting the changed information on a screen."

XII. Claim 1 of the third auxiliary request reads:

"A method for selecting an audio language of a digital broadcasting receiver by detecting and updating a PMT including audio track information, from an input digital broadcasting stream, the method comprising:

determining whether an audio language, of available audio languages of a data stream, has been selected for reproduction by the digital broadcasting receiver;

increasing a current audio language on-screen display order number, in a current on-screen audio language index, by one, when the audio language has been selected;

setting a previous audio language on-screen display order number to equal a value of the increased current audio language on-screen display order number and storing the increased current audio language on-screen display order number in the current audio language index;

displaying the current audio language index having the increased current audio language on-screen display order number;

fetching a new current audio language index, and setting the current audio language on-screen display order number to correspond to the new current audio language index;

comparing the previous audio language on-screen display order number with the current audio language on-screen display order number;

displaying the new current audio language index, setting the previous audio language on-screen display order number to equal the value of the current audio language on-screen display order number, and then returning to the operation of determining of whether an audio language selection has been made when the previous audio language on-screen display order number and current audio language on-screen display order number are different; and

returning to the operation of determining of whether an audio language selection has been made when the previous audio language on-screen display order number and current audio language on-screen display order number are the same."

XIII. Claim 1 of the fourth auxiliary request differs from claim 1 of the main request in that the characterising portion of the former reads:

"characterised in that, following selection of a new language, the language information, used for display of an audio language selection menu in the user-controlled audio output language selection process, is updated, if it is detected that the PMT has been updated since said language information was last set,

wherein updating the language information comprises setting a current audio language on-screen display order number (N_c) to correspond with a current audio index, thereby reflecting an update in the PMT."

- XIV. Claim 1 of the fifth auxiliary request differs from claim 1 of the main request in that the characterising portion of the former reads:

"characterised in that, following selection of a new language, the language information, used for display of an audio language selection menu in the user-controlled audio output language selection process, is updated, if it is detected that the PMT has been updated since said language information was last set,

wherein the language information comprises a current audio language on-screen display order number (N_c), and wherein updating the language information comprises setting the current audio language on-screen display order number (N_c) to correspond with a current audio index, thereby reflecting an update in the PMT."

- XV. Claim 1 of the sixth auxiliary request differs from claim 1 of the fifth auxiliary request in that the characterising portion reads (wording added in claim 1 of the sixth auxiliary request has been underlined):

"characterised in that, following selection of a new language, and also following a determination that a new language has not been selected, the language information, used for display of an audio language selection menu in the user-controlled audio output language selection process, is updated, if it is detected that the PMT has been updated since said language information was last set,

wherein updating the language information comprises setting a current audio language on-screen display order number (N_c) to correspond with a current audio index, thereby reflecting an update in the PMT."

XVI. Claim 1 of the seventh auxiliary request reads:

"A method of setting the audio output language of a digital broadcasting receiver, receiving a data stream comprising a video stream, a plurality of associated audio streams, each of said audio streams being in a different language, and a PMT signal containing a list of the audio streams associated with the video stream and language descriptor data for each of the audio streams, the method comprising:

updating a PMT according to changes in the PMT signal;
and performing a user-controlled audio output language selection process,

performing a user-controlled audio output language selection process,

characterised in that, following selection of a new language, the language information, used for display of an audio language selection menu in the user-controlled audio output language selection process, is updated, if it is detected that the PMT has been updated since said language information was last set,

wherein the user-controlled audio output language selection process comprises:

incrementing a current audio output language on-screen display order number (N_c) by one in response to a language selection user input;

setting a previous audio output language on-screen display order number (N_p) to the current audio output language on-screen display order number (N_c);

displaying an indication of the currently selected language with reference to the current PMT (V_c) and the current audio output language on-screen display order number (N_c);

resetting the current audio output language on-screen display order number (N_c) on the basis of the current PMT (V_c);

comparing the reset current audio output language on-screen display order number (N_c) with the previous audio output language on-screen display order number (N_p); and

if the previous audio output language on-screen display order number (N_p) does not equal the reset previous audio output language on-screen display order number (N_p), displaying an indication of the currently selected language with reference to an updated current PMT (V_R) and the reset current audio output language on-screen display order number (N_c) and setting the previous audio output language on-screen display order number (N_p) to the reset current audio output language on-screen display order number (N_c)."

XVII. Claim 1 of the eighth auxiliary request reads:

"A method of setting the audio output language of a digital broadcasting receiver, receiving a data stream comprising a video stream, a plurality of associated audio streams, each of said audio streams being in a different language, and a PMT signal containing a list

of the audio streams associated with the video stream and language descriptor data for each of the audio streams, the method comprising:

updating a PMT according to changes in the PMT signal;
and

performing a user-controlled audio output language selection process,

characterised in that, following selection of a new language, the language availability information, used for display of an audio language selection menu in the user-controlled audio output language selection process, is updated by updating language availability, if it is detected that the PMT has been updated since said language availability information was last set, so that when a PMT including audio language availability information, changes after a user starts an audio language selection menu, on-screen display orders and corresponding names of actual audio languages are updated by checking the changed PMT."

XVIII. The opposition division's objections where relevant to the present decision may be summarised as follows:

(a) The passage on page 3, lines 12 to 17, "*refers to subject-matter [...] clearly distinct from the subject-matter of claim 1*". "Cherry-picking" of features from different, contradictory parts of the original disclosure did not provide a clear and unambiguous basis for the subject-matter of the claims of the then main and first and third auxiliary requests (see decision, Reasons, sections 8 to 13 and 15).

- (b) The condition "*since said language information was last set*" was missing from the passages cited by the appellant (page 8, Reasons, section 12).
- (c) The then second auxiliary request was not admitted into the proceedings because it was late-filed and *prima facie* did not meet the requirements of Article 123(2) EPC (see decision, Reasons, section 14).
- (d) The paragraph bridging pages 5 and 6 did not mention performing a language update when the PMT changed, whereas the passage on page 3, lines 12 to 17, disclosed verifying a change of language information in the PMT. The different disclosures of these passages had to be considered in isolation. Since claim 1 of the fourth auxiliary request combined features of both passages, it did not meet the requirements of Article 123(2) EPC (see decision, Reasons, section 16).

XIX. The appellant's arguments where relevant to the present decision may be summarised as follows:

- (a) The following passages of the description of the application as filed provided a basis for claim 1 of the main request (see statement of grounds of appeal, points 2.1.3, 2.1.4, 2.1.5): page 3, lines 11 to 17; page 4, lines 13 to 15; page 4, lines 18 to 21; and the statement bridging pages 5 and 6.

The first of the passages mentioned above disclosed a method for selecting an audio language comprising "operations" which corresponded to the features of claim 1 as follows:

- (i) *"changing a set audio language" compared with the "selection of a new language";*
 - (ii) *"checking whether audio language information of a data stream changes as a PMT of the data stream is updated" correlated with detecting "that the PMT has been updated since said language information was last set"; and*
 - (iii) *"displaying available audio indices reflecting the changed information on a screen" corresponded to updating "the language information, used for display of an audio language selection menu in the user-controlled audio output language selection process".*
- (b) Since the "operations" enumerated on page 3 of the description as filed were part of a method for selecting an audio language and were listed in a given order, it was clear that checking for an update and displaying the changed information followed the selection of a new language.
- (c) Although the passage on page 3 did not use the exact wording of the claims, it was immediately apparent that for an update it had to be relevant whether the PMT had changed since the audio language was last set.
- (d) Claim 1 of the second auxiliary request had been amended to reflect the wording of page 3.
- (e) The features added to claim 1 of the fourth, fifth and sixth auxiliary requests "narrowed" and

clarified the claims by strengthening the link between updating the language information and the PMT update. These features were present in claim 1 of the auxiliary request forming the basis for the opposition division's decision.

(f) Claim 1 of the eighth auxiliary request specified detecting "*that the PMT has been updated since said language availability information was last set*". It was clear to a person skilled in the art that setting language availability information referred to storing language availability information in the receiver.

XX. The respondent in essence repeated the reasons set out by the opposition division in the decision under appeal. It further submitted that claim 1 of the second auxiliary request did not meet the requirements of Article 84 EPC, because the phrase "*updating the set audio language*" was not clear (see its reply to the appeal, point 5.2) and that claim 1 of the third auxiliary request did not meet the requirements of Articles 56 and 123(3) EPC (see its reply to the appeal, points 6.1 and 6.2).

Reasons for the Decision

1. The appeal is admissible.
2. *Main request (Article 100(c) EPC 1973) and second and seventh auxiliary requests (Article 123(2) EPC)*
 - 2.1 In its notice of opposition, the respondent raised the ground for opposition under Article 100(c) EPC 1973 and submitted that the subject-matter of the patent as granted extended beyond the content of the application

as filed. It follows from the wording of Article 101(2) EPC that the ground for opposition under Article 100(c) EPC 1973 is prejudicial to the maintenance of the European patent as granted.

According to Article 123(2) EPC, a European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

It is established case law that the subject-matter of the granted patent or of the patent as amended must be 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 the whole of the disclosure of the description, claims and drawings as filed (see G 3/89, OJ EPO 1993, 117; G 11/91, OJ EPO 1993, 125; G 2/10, OJ EPO 2012, 376, and also the Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, II.E.1).

2.2 Granted claim 1 and amended claim 1 of the second and seventh auxiliary requests specify that:

"following selection of a new language [6], the language information, used for display of an audio language selection menu in the user-controlled audio output language selection process, is updated [5], if it is detected that the PMT has been updated since said language information was last set [7]".

The numbers in square brackets are the numbers allocated to the features in the statement of grounds of appeal, pages 3 and 4.

2.3 The board has not been persuaded that the "operations" listed on page 3 directly correspond to the method steps of claim 1 (see point XIX(a) above) and that it is clear that checking for an update and displaying the changed information follow the selection of a new language (see point XIX(b) above).

According to granted claim 1 and amended claim 1 of the second and seventh auxiliary requests, the menu is updated following the selection of a new language if *"the PMT has been updated since said language information was last set"*, i.e. the menu is updated after the selection of a new language if the PMT has been updated since the previous language selection.

The passage on page 3, lines 11 to 17, discloses changing the audio language to be reproduced in response to pressing the audio language selection button or if the audio language information changes after a PMT update. In addition, the available audio indices reflecting the changed information are displayed. Whereas the passage on page 3 establishes a link between changing the set audio language and pressing the language selection button, and displaying available audio indices and a change in audio language information, it does not disclose a causal or temporal link between pressing the language selection button and displaying available audio indices. The enumeration of the "operations" in a particular order does not imply that the operation mentioned first precedes or causes the subsequently mentioned operations.

The passage on page 4, lines 1 to 11, describes the change of the display order number after the language selection key has been pressed. It does not mention a PMT update. Page 4, lines 13 to 15, continues thus:

"Subsequently, the current audio language on-screen display number N_c is now set (S31) to correspond with a current audio index, thereby reflecting an update of the PMT" (emphasis added). The adverb "thereby" suggests that the PMT update is reflected by setting the display order number N_c to the current audio index. The term "audio (language) index" seems to denote a number indicating the position of a language in a list (see, for instance, page 3, lines 28 to 30: "Upon initiating the audio selection menu, the audio language indices ... can be displayed"). It is not clear and unambiguous from this passage how setting the number N_c to the index of the current (selected) channel results in "reflecting" a PMT update. The passage on page 4, lines 18 to 21, does not mention a PMT and thus does not aid in clearly defining the link between updating the PMT and setting the number N_c .

Summarising, none of the passages referred to above discloses displaying a menu with audio indices reflecting a changed PMT in response to selecting a new language.

- 2.4 Contrary to the appellant, the board agrees with the opposition division that none of the cited passages discloses "feature 7" (see points XVIII(b) and XIX(c) above).

Figure 3 and the corresponding passages on pages 5 and 6 "reflect the update of the PMT on the audio language selection menu" (page 5, lines 6 and 7). The "PMT update mode continues to be performed while the audio language selection menu is operated" (page 5, lines 27 and 28). Thus, the menu is updated if the PMT changes while the audio language selection menu is displayed.

Assuming that the *"update of the PMT"* encompasses carrying out the steps shown in Figure 3 and described on page 5, it follows that after *"the current PMT is determined to have been updated [... a] currently set audio language index and audio tag from the audio track are then stored"* (page 5, lines 20 and 21). The adverb "then" expresses a temporal relationship between the PMT update and storing an index. This passage does not explain how the PMT update is "reflected" in the index. The paragraph bridging pages 5 and 6 (*"on-screen display orders and corresponding names of actual audio languages are updated by checking the changed PMT"*) sets out the result of the update without specifying any steps. Therefore, these passages cannot provide a direct and unambiguous basis for verifying whether *"the PMT has been updated since said language information was last set"*.

Also, the passages cited by the appellant on pages 3 and 4 (see point XIX(a) and the analysis of the disclosure of these passages set out in point 2.3 above) do not provide a clear and unambiguous basis for verifying whether *"the PMT has been updated since said language information was last set"*.

2.5 In view of the above, the board concludes that:

- (a) the subject-matter of claim 1 of the granted patent extends beyond the disclosure of the application as filed (Article 100(c) EPC 1973); and
- (b) the subject-matter of amended claim 1 of the second and seventh auxiliary requests extends beyond the disclosure of the application as filed (Article 123(2) EPC).

3. *First auxiliary request (Article 123(2) EPC)*

- 3.1 Claim 1 of the first auxiliary request specifies (additions with respect to claim 1 of the main request are underlined, deletions struck out):

"while an audio language selection menu is displayed following selection of a new language, the language information, used for display of ~~an~~ the audio language selection menu in the user-controlled audio output language selection process, is updated, if it is detected that the PMT has been updated since said language information was last set".

- 3.2 Since claim 1 of the first auxiliary request includes "feature 7", the board concludes that, for the reasons set out in point 2.4 above, the subject-matter of claim 1 of the first auxiliary request extends beyond the disclosure of the application as filed (Article 123(2) EPC).

4. *Third auxiliary request - admission into the proceedings (Article 12(4) RPBA)*

- 4.1 The third auxiliary request was submitted with the statement of grounds of appeal. This means that, according to Article 12(1) RPBA, it forms part of the basis of the appeal proceedings.

The aim of opposition-appeal proceedings is to obtain a judicial review of the administrative opposition decision. It follows that the board must as a rule take its decision on the basis of the issues in dispute before the opposition division. It can be directly inferred from the above that the parties have only limited scope to amend the subject of the dispute in

appeal proceedings, and this principle is reflected in Article 12(4) RPBA. It follows that the appeal proceedings are not about bringing an entirely fresh case (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, IV.E.4.1.4).

- 4.2 Claim 1 of the third auxiliary request corresponds to claim 2 as originally filed. This claim was replaced in the pre-grant examination proceedings. The respondent filed notice of opposition based *inter alia* on the ground for opposition under Article 100(c) EPC 1973. In the reply to the notice of opposition, the appellant refuted the "*inadmissible broadening*" (see pages 1 to 4), though without submitting any (auxiliary) requests with a claim corresponding to originally filed claim 2.

The opposition division issued a summons to oral proceedings. In section 1 of a communication annexed to the summons, the division set out in detail why it was of the provisional opinion that the subject-matter of granted claim 1 extended beyond the disclosure of the application as filed. In response to said communication, the appellant filed five auxiliary requests with amended claims, none of them corresponding to claim 2 as originally filed. Following a comprehensive discussion of the objection under Article 100(c) EPC during the oral proceedings (see minutes, points 1 to 9), the appellant filed two auxiliary requests with amended claims, none of them corresponding to claim 2 as originally filed. Thus, throughout the first-instance opposition proceedings it was pointed out to the appellant that the subject-matter of the claims on file extended beyond the disclosure of the application as filed. On two occasions the appellant filed auxiliary requests with

amended claims, none of them corresponding to claim 2 as originally filed. In view of these circumstances, the board concludes that claim 1 of the third auxiliary request could and should have been presented in the first-instance proceedings, for instance as one of the auxiliary requests submitted during the proceedings before the opposition division.

4.3 Admitting the third auxiliary request into the proceedings would bring an entirely fresh case, because the board would have to address for the first time *inter alia* whether claim 1 of this request meets the requirements of Article 56 EPC 1973 and Article 123(3) EPC (see also point XX above).

4.4 Therefore, the board, exercising its discretion under Article 12(4) RPBA, decided not to admit the third auxiliary request into the appeal proceedings.

5. *Fourth, fifth and sixth auxiliary requests - admission into the proceedings (Article 12(4) RPBA)*

5.1 Under Article 12(4) RPBA, the board has the power to hold inadmissible a request which could have been presented in the first-instance proceedings. This applies all the more to requests that were filed and subsequently replaced, withdrawn or abandoned during the first-instance proceedings (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, IV.E.4.3.2.d i)).

5.2 During the oral proceedings, the opposition division announced that the combination of features quoted in point 2.2 above "contravenes Article 123(2) EPC" (see minutes, point 10). In reaction, the appellant replaced the first and second auxiliary requests filed with its

letter dated 20 September 2011 with new first and second auxiliary requests (see minutes, point 13). Further, it decided "*to abandon Auxiliary Request 3*" filed with its letter dated 20 September 2011 (see minutes, point 23). The first, second and third auxiliary requests dated 20 September 2011 were then filed again with the statement of grounds of appeal as fourth, fifth and sixth auxiliary requests, respectively.

5.3 Although claim 1 of the first auxiliary request forming the basis for the decision under appeal comprised the feature "*wherein updating the language information comprises setting a current audio language on-screen display order number (N_c) to correspond with a current audio index, thereby reflecting an update in the PMT*", which in substance or even *verbatim* is present in claim 1 of each of the fourth, fifth and sixth auxiliary requests, the board would have to examine for the first time the combination of features claimed according to each of the fourth, fifth and sixth auxiliary requests. In addition, claim 1 of each of these requests comprises "feature 7", and the amendments made to claim 1 of each of the fourth, fifth and sixth auxiliary requests *prima facie* do not overcome the objection raised in point 2.4 above.

5.4 Therefore, the board, exercising its discretion under Article 12(4) RPBA, decided not to admit the fourth, fifth and sixth auxiliary requests into the appeal proceedings.

6. *Eighth auxiliary request (Article 84 EPC 1973)*

6.1 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"*.

6.2 The characterising portion of claim 1 reads:

"following selection of a new language, the language availability information, used for display of an audio language selection menu in the user-controlled audio output language selection process, is updated by updating language availability, if it is detected that the PMT has been updated since said language availability information was last set, so that when a PMT including audio language availability information, changes after a user starts an audio language selection menu, on-screen display orders and corresponding names of actual audio languages are updated by checking the changed PMT".

6.3 Thus, the claim specifies *"selection of a new language"* and *"display of an audio language selection menu"* and that *"a user starts an audio language selection menu"*.

The relationship between selecting a new language and starting and displaying the menu is not clear. It is normally expected that the user will start the menu to select an available language, i.e. the menu is displayed to select a language. However, according to claim 1, the user first selects a language, and then (following this selection) the language availability information in the menu is updated to reflect changes in the PMT. If the user started the menu, but the language availability information was only updated

after selection of a language, it is not apparent on the basis of which menu information the user selected the new language. This selection could only have been made without taking into account which languages were actually available.

The wording quoted above is inconsistent, because it first specifies that the information used for displaying the menu is updated if the PMT has changed since the "*language availability information was last set*", whereas the "so that" clause specifies that the information used for displaying the menu is updated if the PMT changes "*after a user starts an audio selection menu*". On the basis of the appellant's interpretation that setting language availability information refers to storing said information in the receiver (see point XIX(f) above), the "so that" clause and the phrase preceding this clause specify different criteria for updating information displayed in the menu. If setting referred to any user action for selecting a language, it is not apparent how the user could set, i.e. influence, the available languages.

- 6.4 Summarising, claim 1 of the eighth auxiliary request is not clear, because it is ambiguous whether the menu is updated if it is detected that the PMT changed after starting the menu, after last storing the language availability information in the receiver, or after selecting a new language.
7. Since none of the appellant's requests is allowable, the appeal is to 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