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**Datasheet for the decision
of 17 January 2018**

Case Number: T 0946/12 - 3.5.04

Application Number: 04253315.8

Publication Number: 1513346

IPC: H04N7/167, G11B20/00

Language of the proceedings: EN

Title of invention:

Audio/video stream processing system and method for data copy protection

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Relevant legal provisions:

EPC 1973 Art. 84
EPC R. 103(1) (a)

Keyword:

Claims - clarity - main and auxiliary request (no)
Reimbursement of appeal fee - (no)

Decisions cited:

Catchword:



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Case Number: T 0946/12 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 17 January 2018

Appellant: Samsung Electronics Co., Ltd.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 10 November
2011 refusing European patent application
No. 04253315.8 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman B. Müller
Members: R. Gerdes
B. Willems

Summary of Facts and Submissions

I. The appeal by the applicant is against the decision refusing European patent application No. 04 253 315.8, published as EP 1 513 346 A2.

II. The patent application was refused on the grounds that the subject-matter of the independent claims of the applicant's sole request lacked novelty (Article 54(1) and (2) EPC) in view of document:

D4: WO 03/007601 A1.

The examining division also referred to

D5: EP 1 408 688 A1,

which was taken as a translation of D4.

In the decision under appeal the examining division also found that the wording of claim 1 "first and second copy control information providing enhanced copy protection over the other" was vague (see Reasons, point 2).

III. With the statement of grounds of appeal the appellant submitted claims of an auxiliary request. It requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims underlying the decision under appeal (main request) or on the basis of the claims of the auxiliary request. In addition, it requested that the appeal fee be reimbursed (Rule 103(1)(a) EPC).

IV. In a communication annexed to a summons to oral proceedings the board indicated inter alia that it

considered the claims of all requests to be unallowable for lack of clarity. It also observed that in its preliminary opinion the request for reimbursement of the appeal fee could not be granted.

The relevant parts of the board's communication read as follows:

"Main request

Clarity, Article 84 EPC 1973

3. *In the decision under appeal the examining division found that the wording of claim 1 'first and second copy control information providing enhanced copy protection over the other' was vague (see Reasons, point 2).*

3.1 *The wording in its context is as follows:*

'wherein the means for processing the AV stream processing means is configured to use one of the first and second copy control information providing enhanced copy protection over the other, where the first and second copy control information are different.'

3.2 *The appellant seems to interpret this phrase in the sense that the copy control information defining a stricter copy policy is selected (see statement of grounds, points 2.5 and 2.10). It will have to be discussed [in the oral proceedings] whether the feature necessarily has to be understood in this sense. At present it appears that the phrase could, for example, also be interpreted in the sense that the copy control information which is better protected against tampering, e.g. by being associated with an integrity check value as in D5, paragraph [0108], is used.*

3.3 The appellant argued that the skilled person would be familiar with 2-bit copy control codes (see point 2.3 of the statement of grounds). The board agrees, but claim 1 does not necessarily link the wording "enhanced copy protection" with those codes. It is also noted that in the description any limitation to 2-bit copy control codes is expressly denied (see paragraph [68]).

In this context it is also noted that the concept of copy control information having different or the same values necessarily implies that the compared sets of information have the same format, for example, that both consist of a 2-bit copy control code. However, according to the description, the second copy control information is used to generate a decryption key and thus seems to contain more information than the 2-bit code (see also paragraphs [0070] and [0075]). This inconsistency seems to render claim 1 unclear.

3.4 According to paragraph [12] of the application as filed, the goal of the invention is to prevent unauthorised processing of contents through modification of copy control information. It is noted that claim 1 seems to be silent on the purpose for which the copy control information is used by the means for processing of the AV stream. This purpose, i.e. deciding how to process the content (see for example claim 10 of the main request and paragraphs [0070] and [0071] of the application), seems to be essential to achieve the goal of the invention, Article 84 EPC 1973 in conjunction with Rule 29(3) EPC 1973.

3.5 Claims 1 and 20 relate to an AV stream processing system and an apparatus for copy control for

use in an AV stream processing system, respectively. These claims seem to specify the same components using different terminology and do, therefore, not fulfil the requirement of Rule 29(2) EPC 1973 that a patent application may only exceptionally contain more than one independent claim in the same category.

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Auxiliary request

5. Claim 1 of the first auxiliary request reformulates the last feature of claim 1 of the main request and additionally specifies that the second copy control information is used to generate a decryption key for decrypting content included in the content field.

5.1 The wording of claim 1 'having a higher priority over the other' may be understood in the sense of paragraph [18] such that any priority rule may be used, including always processing the content according to the first copy control information. It is questionable whether based on this interpretation there is any difference in the processing means of claim 1 and the conventional AV stream data copy protection system referred to in figure 2 and paragraphs [08] to [11] of the present application (Article 54(1), (2) and 56 EPC).

5.2 In addition, it is noted that the objections of lack of clarity of points 3.3 to 3.5 are equally applicable to the independent claims of the first auxiliary request.

...

Reimbursement of the appeal fee

6. *The appellant requested a refund of the appeal fee (see statement of grounds, section 4 and point 2.15).*

6.1 *The request concerns the examining division's reasoning in a section of the decision which is entitled 'Obiter dictum (not being a reason for the decision)'. Hence, it appears that the examining division did not base its decision on these reasons. According to established jurisprudence an alleged violation affecting a part of the decision other than its ratio decidendi cannot be a substantial procedural violation (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition, 2016, section IV.E.8.4.1.b). For this reason alone, the board cannot see a substantial procedural violation in the present case.*

6.2 *As a consequence, it seems that the request for reimbursement of the appeal fee cannot be granted."*

V. With a letter dated 22 December 2017 the appellant withdrew its request for oral proceedings and announced that it would not attend them. It requested that the board "issue a final decision based on the written submissions already made."

VI. Oral proceedings were held by the board on 17 January 2018. As announced, the appellant was not represented at them.

The Chairman noted that the appellant had requested in writing that the decision under appeal be set aside and

that a European patent be granted according to the main request underlying the decision under appeal or the auxiliary request filed with the statement of grounds of appeal. In addition, it had requested that the appeal fee be reimbursed (Rule 103(1)(a) EPC).

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

"An audio/video (AV) stream processing system comprising:

means for receiving an AV stream comprising a content information field and a content field, wherein the content information field comprises first copy control information, and the content field comprises second copy control information;

means for processing the AV stream;

means for determining whether the first and second copy control information are different; and

wherein the means for processing the AV stream processing means is configured to use one of the first and second copy control information providing enhanced copy protection over the other, where the first and second copy control information are different."

VIII. Claim 1 of the auxiliary request is identical to claim 1 of the main request except for the clause starting with "wherein", which has been replaced by the following wording:

"... wherein the means for processing the AV stream processes content of the AV stream according to one of the first and second copy control information having a higher priority over the other when the first and second copy control information are different, and

wherein the second copy control information is used to generate a decryption key for decrypting content included in the content field."

Reasons for the Decision

1. The appeal is admissible.

2. In the communication annexed to the summons to oral proceedings, the board expressed its preliminary view that claim 1 of all current requests did not comply with the requirements of Article 84 EPC 1973 (see above, sections 3 and 5 under section IV) and that the appellant's request for reimbursement of the appeal fee could not be granted (see above, section 6 under section IV).
 - 2.1 In response to the communication, the appellant neither submitted amended requests nor provided arguments rebutting the board's preliminary opinion. The board sees no reason to deviate from its preliminary opinion, which therefore becomes final.

 - 2.2 It follows that the decision under appeal cannot be set aside and the appeal fee cannot be reimbursed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

B. Müller

Decision electronically authenticated