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Datasheet for the decision of 9 June 2016

Case Number: T 0980/12 - 3.5.03

Application Number: 03815891.1

Publication Number: 1593217

IPC: H04H9/00

Language of the proceedings: EN

Title of invention:
Methods and apparatus to adaptively gather audience information data

Applicant:
Nielsen Media Research, Inc.

Headword:
Audience data gathering/NIELSEN

Relevant legal provisions:
EPC Art. 56

Keyword:
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Case Number: T 0980/12 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 9 June 2016

Appellant: (Applicant)	Nielsen Media Research, Inc. 299 Park Avenue New York, New York 10171-0074 (US)
Representative:	Samson & Partner Patentanwälte mbB Widenmayerstraße 6 80538 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 6 December 2011 refusing European patent application No. 03815891.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	F. van der Voort
Members:	K. Schenkel
	O. Loizou

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 03815891.1, publication number EP 1 593 217 A, which was originally filed as international application PCT/US2003/004030 (publication number WO 2004/073217).

II. One of the reasons given for the refusal was that the subject-matter of claim 1 of each of a main request and first and second auxiliary requests did not involve an inventive step (Article 52(1) and 56 EPC) having regard to the disclosure of:

D1: WO 95/12278 A and

taking into account common general knowledge in the field of telecommunications.

III. In the statement of grounds of appeal the appellant requested that the decision be set aside and that a patent be granted on the basis of a set of claims of a main request or, in the alternative, one of first to eighth auxiliary requests, all requests as filed with the statement of grounds of appeal.

IV. In a communication accompanying a summons to oral proceedings, the board, without prejudice to its final decision, raised, *inter alia*, objections under Article 52(1) EPC in conjunction with Article 56 EPC (lack of inventive step).

In said communication, the following document was introduced by the board exercising its discretion under Article 114(1) EPC:

D2: EP 1 060 704 A.

V. In response to the summons, the appellant filed with a letter dated 9 May 2016 a substantive response together with further sets of claims of auxiliary requests 0, 1a, 2a, 2b, 2c, 3a, 4a, 5a, 6a, 7a, 8a, 9, 9a, 10 and 10a. Further, the appellant filed with a letter dated 7 June 2016, by way of replacement, an amended main request.

VI. Oral proceedings were held on 9 June 2016.

The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a main request as filed during the oral proceedings or, in the alternative, on the basis of the claims of one of auxiliary requests 1 to 8 as filed with the statement of grounds of appeal and auxiliary requests 9, 10, 0, 1a, 2a, 2b, 2c and 3a to 10a as filed with the letter dated 9 May 2016.

At the end of the oral proceedings, after due deliberation, the chairman announced the board's decision.

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

"A method of adaptively gathering audience measurement data by a system having a plurality of sensors at a local site comprising:

selecting one preference ranking for the sensors in the plurality which preference ranking is based on a fixed technical system factor not subject to short term variation, namely (a) a presence of two or more affiliates of a broadcasting company in a market, (b) a local preference for a sensor type, (c) a presence of a

set top box having an interactive program guide; (d) a type of communication link; (e) a complexity of using a sensor type; (f) a presence of a viewing time shifting device; and/or (g) a presence of a viewing place shifting device. *[sic]*

monitoring at least one of the variable system factors currently available in the system: (a) bandwidth of a communication link between a local site and a remote site, (b) storage capacity at the local site or at the remote site, (c) processing speed associated with a processor at the local or at the remote site;

summing an amount of audience measurement data per unit of time that may currently be gathered by the plurality of sensors located at the same local site;

selecting at least one sensor from the plurality of sensors based on its preference ranking, on the variable system factor and on the amount of data per unit of time that may currently be gathered by the plurality of sensors by dropping the sensor(s) having the lowest preference,

storing the audience measurement data developed by the at least one selected sensor; and,

ignoring data output from a sensor in the plurality of sensors at the local site that is not one of the at least one selected sensor."

VIII. Claim 1 of auxiliary request 1 reads as follows:

"A method of gathering audience measurement data comprising:

monitoring a variable system factor, the variable system factor comprising at least one of: (a) available bandwidth of a communication link between a local site and a remote site, (b) available storage capacity at the local site, (c) available storage capacity at the

remote site, (d) processing speed associated with a processor at the local site, and (e) processing speed associated with a processor at the remote site;

selecting a preference ranking for the sensors in the plurality of sensors;

summing an amount of audience measurement data per unit of time that may currently be gathered by a plurality of sensors located to develop the audience measurement data at the local site, the plurality of sensors being located at the same local site;

selecting at least one sensor from the plurality of sensors based on the preference ranking, the variable system factor and the amount of data per unit of time that may currently be gathered by the plurality of sensors;

storing the audience measurement data developed by the at least one selected sensor; and,

at least one of ignoring or discarding data developed from a sensor in the plurality of sensors at the local site that is not one of the at least one selected sensor."

IX. Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that the paragraph

"storing the audience measurement data developed by the at least one selected sensor;" has been replaced by

"storing the audience measurement data developed by the at least one selected sensor at the remote site;"

and in that before this paragraph the following paragraph has been inserted:

"communicating with a switch coupled to the plurality of sensors to connect the at least one selected sensor to the remote site for storage;".

X. Claim 1 of each of auxiliary requests 3 to 8 differs from claim 1 of auxiliary request 1 in that:

the third paragraph ("selecting a preference ranking for the sensors in the plurality of sensors;") has been deleted;

in that in the fifth paragraph ("selecting at least one sensor from the plurality of sensors based on the preference ranking, the variable system factor and the amount of data per unit of time that may currently be gathered by the plurality of sensors;") the wording "the preference ranking," has been deleted;

and in that in the second paragraph the wording

"the variable system factor comprising at least one of: (a) available bandwidth of a communication link between a local site and a remote site, (b) available storage capacity at the local site, (c) available storage capacity at the remote site, (d) processing speed associated with a processor at the local site, and (e) processing speed associated with a processor at the remote site"

has been replaced respectively by:

"the variable system factor comprising processing speed associated with a processor at the remote site" (auxiliary request 3);

"the variable system factor comprising processing speed associated with a processor at the local site" (auxiliary request 4);

"the variable system factor comprising available storage capacity at the remote site" (auxiliary request 5);

"the variable system factor comprising available bandwidth of a communication link between a local site and a remote site" (auxiliary request 6);

"the variable system factor comprising available storage capacity at the local site" (auxiliary request 7); and

"the variable system factor comprising (a) available bandwidth of a communication link between a local site and a remote site, (b) available storage capacity at the local site, (c) available storage capacity at the remote site, (d) processing speed associated with a processor at the local site, and (e) processing speed associated with a processor at the remote site" (auxiliary request 8).

XI. Claim 1 of auxiliary request 9 differs from claim 1 of auxiliary request 1 in that:

the third paragraph ("selecting a preference ranking for the sensors in the plurality of sensors;") has been deleted;

in that in the fifth paragraph ("selecting at least one sensor from the plurality of sensors based on the preference ranking, the variable system factor and the amount of data per unit of time that may currently be

gathered by the plurality of sensors;") the wording "the preference ranking," has been deleted;

and in that in the sixth paragraph, after "storing the audience measurement data developed by the at least one selected sensor", the wording

", wherein the audience measurement data includes at least one of tuning information or people information gathered to produce ratings data" has been added.

XII. Claim 1 of auxiliary request 10 reads as follows:

"A method of gathering audience measurement data comprising:

monitoring a variable system factor, the variable system factor comprising available bandwidth of a communication link between a local site and a remote site;

determining a measure of an amount of data that can currently be transmitted over the communication channel based on the available bandwidth;

summing an amount of audience measurement data per unit of time that may currently be gathered by a plurality of sensors located to develop the audience measurement data at the local site, the plurality of sensors being located at the same local site;

utilizing the measure of the amount of data that can currently be transmitted over the communication channel to determine if a storage device has available capacity to store at least a subset of the data output by the one or more sensors outputting valid data;

selecting a preference ranking for the sensors in the plurality of sensors;

selecting at least one sensor from the plurality of sensors according to the preference ranking based on

the measure of the amount of data that can currently be transmitted over the communication channel and the amount of data per unit of time that may currently be gathered by the plurality of sensors, and the available capacity of the storage device;

storing the audience measurement data developed by the at least one selected sensor; and,

at least one of ignoring or discarding data developed from a sensor in the plurality of sensors at the local site that is not one of the at least one selected sensor."

XIII. Claim 1 of auxiliary request 0 differs from claim 1 of auxiliary request 1 in that:

the third paragraph ("selecting a preference ranking for the sensors in the plurality of sensors;") has been deleted; and in that

in the fifth paragraph ("selecting at least one sensor from the plurality of sensors based on the preference ranking, the variable system factor and the amount of data per unit of time that may currently be gathered by the plurality of sensors;") the wording "the preference ranking," has been deleted.

XIV. Claims 1 of auxiliary requests 1a, 2a, 3a, 4a, 5a, 6a, 7a, 8a, 9a and 10a are identical to claims 1 of auxiliary requests 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, respectively.

XV. Claims 1 of auxiliary requests 2b and 2c differ from claim 1 of auxiliary request 2 in that in the sixth paragraph the wording

"communicating with a switch ..."

has been replaced respectively by

"instructing a switch ..." (auxiliary request 2b) and

"communicating, using a processor, with a switch ..." (auxiliary request 2c).

Reasons for the Decision

1. Claim interpretation

1.1 Claim 1, last three paragraphs, of the main request (cf. point VII above) was interpreted by the board as follows (underlining by the board):

"selecting for isolation a sensor from the plurality of sensors ranked in accordance with the preference ranking, based on the variable system factor and on the amount of data per unit of time that may currently be gathered by the plurality of sensors, by dropping the sensor having the lowest preference;

storing the audience measurement data output by the at least one remaining sensor; and,

ignoring data output from a sensor in the plurality of sensors at the local site that is not one of the at least one remaining sensor."

1.2 This interpretation is in line with paragraph [0058] of the description of the application as published ("The preference ranking rule is used in selecting which sensors 12-20 to isolate ...") and was shared by the appellant.

1.3 The corresponding paragraphs in claim 1 of each of the auxiliary requests will be interpreted accordingly.

2. Main request

2.1 D2 (cf. the abstract, paragraph [0013], and Fig. 2) relates to a system 100 for gathering and subsequently transmitting data output by multiple sensors 200A, 200B, in which system technical constraints are taken into account.

The board notes at this point that, even though D2 describes in particular a wireless telemetry system for medical purposes, it is not limited to applications in the medical field, since it also relates to telemetry systems in general (see D2, paragraph [0001] and claim 1).

Further, D2 discloses that the sensors whose data is to be transmitted are selected from amongst the sensors according to certain criteria (paragraphs [0013] and [0025]). The board notes in this respect that defining criteria for a selection is to be understood as selecting a preference ranking, since a selection implies giving selected data preference over non-selected data.

D2, using the language of claim 1 of the main request and taking the above remarks into account, thus discloses a method of adaptively gathering measurement data by a system having a plurality of sensors at a local site (column 2, line 50, to column 3, line 11 (the transmitter and the local and remote sensors are located at the patient, i.e. the local site), the method comprising:

selecting one preference ranking for the sensors in the plurality, the preference ranking being based on a fixed technical system factor not subject to short-term variation (column 3, lines 15 to 28), namely the presence of a plugged sensor (column 3, lines 18 to 28);

acquiring knowledge of at least one of the variable system factors currently available in the system: (a) bandwidth of a communication link between a local site and a remote site (column 2, line 50, to column 3, line 11, column 4, lines 17 to 23, and Fig. 2 (the receiver 150 is at the remote site), and column 3, lines 15 to 18 (selecting automatically the data to be transmitted "in accordance with the bandwidth" implies that the total amount of data generated by the sensors and the bandwidth currently available must be known, which is also in line with the stated advantage of "Optimum use of limited Radio Frequency spectrum" (column 3, lines 36 to 41));

summing an amount of measurement data per unit of time that may currently be gathered by the plurality of sensors located at the same local site (column 3, lines 15 to 18);

selecting for isolation a sensor from the plurality of sensors ranked in accordance with the preference ranking, based on the variable system factor and on the amount of data per unit of time that may currently be gathered by the plurality of sensors, by dropping the sensor having the lowest preference (cf. column 5, lines 38 to 50 ("The selecting unit 210 allows selecting data supplied from the local sensor 120 and/or the remote sensor(s)" by selecting a sensor ("select the physiologically most meaningful sensor")). Further, the selection of a sensor and, hence, the data supplied by it implies that the data supplied by a non-selected sensor is not processed and the respective

sensor is thus isolated. The board further notes that the wording "dropping the sensor" does not imply any further step of the method other than not selecting the sensor); and,

ignoring data output from a sensor in the plurality of sensors at the local site that is not one of the at least one remaining sensors (the data from the sensors which were not selected is not transmitted or, in other words, ignored).

2.2 The subject-matter of claim 1 of the main request thus differs from the method disclosed in D2 in that:

(i) the measurement data is audience measurement data;

(ii) the fixed technical system factor not subject to short-term variation is (a) a presence of two or more affiliates of a broadcasting company in a market, (b) a local preference for a sensor type, (c) a presence of a set-top box having an interactive programme guide, (d) a type of communication link, (e) a complexity of using a sensor type, (f) a presence of a viewing time shifting device and/or (g) a presence of a viewing place shifting device;

(iii) the knowledge of the at least one of the variable system factors is acquired by monitoring; and

(iv) the method further comprises the step of storing the audience measurement data output by at least one remaining sensor (cf. point 1.1 above).

2.3 Starting out from D2, the technical problem underlying the claimed subject-matter may thus be seen in further implementing the telemetry system of D2 and applying it to other data.

2.4 The skilled person starting out from D2 and noting that D2 is not limited to gathering medical data would, when faced with the above-mentioned technical problem, consider document D1, since this document relates to a telemetry system in which other data is gathered, namely audience measurement data.

2.5 More specifically, D1 discloses a method of gathering audience measurement data (abstract and page 26, lines 8 to 13) in a system with a plurality of sensors (page 22, lines 16 to 21) in which at least one sensor is selected (page 26, lines 4 to 8, page 32, lines 23 to 29). The sensors employed are, for example, a people sensor (page 19, lines 9 to 11) and a microphone (page 25 to 27). Further examples of the sensors are an inductive audio pickup, video cameras, and photosensors (page 23, line 24 to page 24, line 2). The board notes that it would be obvious to a skilled person to select the sensor(s) depending on the desired application. The same applies to the fixed technical system factors which are taken into account when selecting the sensor. It would thus have been obvious to the skilled person that, in a system for gathering audience measurement data, other fixed technical system factors are relevant, and for example to have, instead of a plugged sensor, a set top box with an interactive programme guide, or a viewing time shifting device. Hence, in the present case, selecting one of these fixed technical system factors in a method of gathering audience measurement data (features (i) and (ii)) does not contribute to inventive step.

With respect to feature (iii) the board notes that the application as filed (paragraph [0044]) discloses, as an example of a system for monitoring the bandwidth, a

sensor for estimating the currently available bandwidth by using a look-up table. The term "monitoring" may therefore be broadly interpreted and includes consulting a look-up table. D2 discloses that the bandwidth is taken into account (column 3, lines 15 to 18; "in accordance with the bandwidth"), which implies that a value representative of the bandwidth is to be obtained. Determining a value by consulting a look-up table is a well-known measure for the skilled person. Hence, it would have been obvious to the skilled person to acquire the knowledge of the bandwidth by using a look-up table, i.e. by "monitoring" in the sense of the present application.

Storing data (feature iv) in a system for processing data, in particular in a processor controlled system, is an obvious measure for the person skilled in the art (cf. for example D1, page 22, lines 5 to 10, "data storage and telecommunication processor", and page 26, lines 20 to 24).

Hence, when faced with the above-mentioned technical problem and starting out from D2, the skilled person, noting that D2 is not limited to medical data (cf. point 2.1) and using common general knowledge, would apply the teaching of D1 to the method of D2 and thereby arrive, without exercising inventive skill, at a method which includes all the features of claim 1 of the main request.

2.6 The appellant argued that in the method of D2 data to be transmitted is selected based on factors relating to the patient and, hence, not on fixed technical system factors. It referred to the example in D2 according to which in case of an alarm condition a specific parameter is transmitted (paragraph [0026]).

The board notes, however, that D2 further discloses that the selection of a sensor takes into account whether or not a sensor located at the patient, i.e. the local site, is plugged (column 3, lines 15 to 28) and, thus, whether or not a sensor is present in the system. The presence of a sensor in the system defines the system configuration and is therefore a fixed technical system factor. In this respect, the board notes that the list of fixed technical system factors in claim 1 of the main request also includes the presence of specific devices.

The appellant further argued that D2 did not disclose that the bandwidth is a variable system factor and referred to paragraph [0007] which states that the bandwidth of radio frequency channels "is usually fixed due to telecommunication regulations". The board, however, notes that paragraph [0007] relates to the technical background and does not exclude a bandwidth which is not fixed ("usually"), i.e. is variable, and further that in D2, in the summary and detailed description of the invention, there is no mention of the bandwidth being fixed (cf. paragraph [0025] "technical constraints as limited bandwidths" and paragraph [0026] "in accordance with bandwidth or other transmission path constraints").

The appellant's arguments are therefore not convincing.

2.7 The board concludes that the subject-matter of claim 1 of the main request does not involve an inventive step (Articles 52(1) and 56 EPC).

3. Auxiliary request 1

3.1 Claim 1 of auxiliary request 1 (see points VIII and 1.3 above) differs from claim 1 of the main request essentially in that the selection of the preference ranking need not be based on a fixed technical system factor and in that the selection for isolation of a sensor need not be by dropping the sensor with the lowest preference. Further differences concern clarity issues without narrowing the scope of claim 1 of the main request.

3.2 Hence, the subject-matter of claim 1 of auxiliary request 1 is broader than that of claim 1 of the main request. The considerations given in respect of the subject-matter of claim 1 of the main request therefore apply *mutatis mutandis*.

3.3 Consequently, the subject-matter of claim 1 of auxiliary request 1 does not involve an inventive step (Articles 52(1) and 56 EPC).

4. Auxiliary request 2

4.1 Claim 1 of auxiliary request 2 (see points IX and 1.3 above) differs from claim 1 of auxiliary request 1 in that the method further comprises the step of communicating with a switch coupled to the plurality of sensors to connect the at least one remaining sensor to the remote site for storage and in that the audience measurement data developed by the at least one remaining sensor is stored at the remote site.

4.2 D2 discloses a switch ("selecting unit 210" together with "coupling unit 170", column 5, lines 38 to 44) coupled to the sensors and for connecting the sensors, the data of which is to be transmitted, to the remote site ("receiver", abstract).

4.3 Further, D1 discloses that the data is transmitted from the local site ("household metering apparatus (14)") to a remote site ("data collection apparatus (36)", abstract). The remote site is provided with a computer ("central office computer 82", page 28, lines 13 to 18). Since computer systems inherently comprise some sort of storage device, the use of a computer for processing the data received from the local site implies that the measurement data received from the local site is stored at the remote site.

4.4 The added features of claim 1 of auxiliary request 2 are thus known from either D1 or D2. Further, the considerations given in respect of the subject-matter of claim 1 of auxiliary request 1 apply, *mutatis mutandis*, to the subject-matter of claim 1 of auxiliary request 2.

4.5 Hence, the subject-matter of claim 1 of auxiliary request 2 does not involve an inventive step (Articles 52(1) and 56 EPC).

5. Auxiliary requests 3, 4, 5, 6, 7 and 8

5.1 Claims 1 of auxiliary requests 6, 7, 5, 4 and 3 (see point X above) differ from claim 1 of auxiliary request 1 in that the variable system factor is respectively:
(a) available bandwidth of a communication link between a local site and a remote site,
(b) available storage capacity at the local site,
(c) available storage capacity at the remote site,
(d) processing speed associated with a processor at the local site, and
(e) processing speed associated with a processor at the remote site.

Claim 1 of auxiliary request 8 differs from claim 1 of auxiliary request 1 in that the variable technical system factor comprises (a), (b), (c), (d) and (e).

5.2 D2 discloses that the data to be transmitted is selected in accordance with the bandwidth of a communication link between a local site and a remote site, or other system constraints (column 3, lines 15 to 18 and point 2.1). Thus, D2 discloses that the selection of the sensor is based on feature (a) (cf. point 2.1).

In a system for gathering and transmitting data, transmission path constraints include all components and their properties which are used in the gathering or transmission of data over the data path and which may potentially limit or inhibit the gathering or transmission of the data. In particular, the skilled person would be aware that the processing speed of a processor at the local or the remote site and the available storage capacity at the local or the remote site are system properties which are relevant for the gathering and transmission of data in the system. Identifying these properties as system constraints and selecting the sensor based on one or all of these constraints does not therefore contribute to inventive step. Further, the considerations given in respect of the subject-matter of claim 1 of auxiliary request 1 apply, *mutatis mutandis,* to the subject-matter of claims 1 of auxiliary requests 3, 4, 5, 6, 7 and 8.

5.3 The appellant argued that D2 disclosed only that sensor data to be transmitted was selected in accordance with the bandwidth. No other factors were suggested. The board is not convinced by this argument and notes that

in D2 the bandwidth is merely given as an example (D2, column 5, lines 30 and 31 "Typical applications of the latter case are due to technical constraints such as limited bandwidths") and that system constraints in general may be taken into account when selecting the data to be transmitted (column 3, lines 15 to 18 "... bandwidth or other transmission path constraints").

5.4 Consequently, the subject-matter of claim 1 of each of auxiliary requests 3, 4, 5, 6, 7 and 8 does not involve an inventive step (Articles 52(1) and 56 EPC).

6. Auxiliary request 9

6.1 Claim 1 of auxiliary request 9 (see point XI above) differs from claim 1 of auxiliary request 1, *inter alia*, in that the audience measurement data includes at least one of tuning information or people information gathered to produce rating data.

The other differences between claims 1 of auxiliary requests 1 and 9 derive from the deletion of features in claim 1 of auxiliary request 9, thereby broadening its scope.

6.2 D1 discloses that the audience measurement system identifies to which programme a household receiver is tuned or, in other words, retrieves tuning information (page 10, lines 16 to 19). The board notes that the purpose of an audience measurement system is to determine the preference of the audience for each of the different programmes or channels. This implies that the channels or programmes are compared against each other, which can be considered as being rating information. Further, the considerations given in respect of the subject-matter of claim 1 of auxiliary

request 1 apply, *mutatis mutandis*, to the subject-matter of claim 1 of auxiliary request 9.

6.3 Consequently, the subject-matter of claim 1 of auxiliary request 9 does not involve an inventive step (Articles 52(1) and 56 EPC).

7. Auxiliary request 10

7.1 Claim 1 of auxiliary request 10 (see point XII above) differs from claim 1 of auxiliary request 1 essentially in that

(i) the variable system factor is limited to the available bandwidth of a communication link between the local site and the remote site, in that

the method further comprises the steps of:

(ii) determining a measure of an amount of data that can currently be transmitted over the communication channel based on the available bandwidth; and

(iii) utilising the measure of the amount of data that can currently be transmitted over the communication channel to determine if a storage device has available capacity to store at least a subset of the data output by the one or more sensors outputting valid data, and in that

(iv) the selection of the at least one sensor from the plurality of sensors ranked in accordance with the preference ranking is further based on the measure of the amount of data that can currently be transmitted over the communication channel and the available capacity of the storage device.

7.2 Feature (i) is known from D2 which discloses that the data to be transmitted is selected "in accordance with bandwidth or other system constraints" (column 3, lines 15 to 18).

The board understands the term "bandwidth" in the present context as referring to the data rate (see also page 17, lines 3 to 5 of the application as published, "Alternatively, the bandwidth sensor 62 may gather real time data by monitoring the rate at which data is currently being transferred between the home site and the central office 24") or, in other words, the amount of data per unit of time. Hence, feature (ii) is already implicit in feature (i).

Features (iii) and (iv) concern a storage device which can store sensor data, for example at the local site. At the filing date it was however well-known in the art that a data storage device may be used as a data transmission buffer, in order to temporarily store data which cannot yet be transmitted. Providing a transmission buffer is therefore an obvious measure in order to balance fluctuations in the bandwidth or any other problems encountered in the data transmission. Further, the amount of data stored in the buffer and, in particular, its variations evidently depend on the data input rate, i.e. the data output by the sensor(s), and the data transmission output rate, i.e. the amount of data which can be transmitted at the currently available bandwidth. In the event of a buffer overflow, data would be lost. Since the loss of data is generally undesirable, the skilled person would adapt the amount of data output by the sensor correspondingly and would further base the sensor selection on the available capacity of the buffer and the available bandwidth.

Further, the considerations given in respect of the subject-matter of claim 1 of auxiliary request 1 apply *mutatis mutandis*.

7.3 Consequently, the subject-matter of claim 1 of auxiliary request 10 does not involve an inventive step (Articles 52(1) and 56 EPC).

8. Auxiliary request 0

8.1 The subject-matter of claim 1 of auxiliary request 0 (see point XIII above) is broader than that of claim 1 of auxiliary request 1.

8.2 Hence, the reasons given above in respect of the subject-matter of claim 1 of auxiliary request 1 apply, *mutatis mutandis*, to the subject-matter of claim 1 of auxiliary request 0.

8.3 Consequently, the subject-matter of claim 1 of auxiliary request 0 does not involve an inventive step (Articles 52(1) and 56 EPC).

9. Auxiliary requests 2b and 2c

9.1 Claims 1 of auxiliary requests 2b and 2c differ from claim 1 of auxiliary request 2 in that the wording

"communicating with a switch ..." has been replaced respectively by

"instructing a switch ..." (auxiliary request 2b) and

"communicating, using a processor, with a switch ..." (auxiliary request 2c).

9.2 In claim 1 of auxiliary request 2 (see point IX above) the purpose of the communication with the switch is to connect the at least one remaining sensor to the remote site for storage and, hence, to control or instruct the switch. The wording "instructing a switch" in claim 1 of auxiliary request 2b therefore has the same meaning as the wording "communicating with a switch" in claim 1 of auxiliary request 2.

With respect to the use of a processor, the board notes that the system of D2 comprises a processor ("processing unit 160", column 4, lines 17 to 23) which controls a selecting unit (column 4, lines 37 to 41) which in turn allows the selection of data from the different sensors (column 5, lines 38 to 40). Thus, D2 discloses the use of a processor to communicate with a switch. Further, the board notes that it would be obvious to the skilled person to control the switch by using a processor which is already available in the system.

Further, the considerations given in respect of the subject-matter of claim 1 of auxiliary request 2 apply, *mutatis mutandis*, to the subject-matter of claims 1 of auxiliary requests 2b and 2c.

9.3 Consequently, the subject-matter of claims 1 of auxiliary requests 2b and 2c does not involve an inventive step (Articles 52(1) and 56 EPC).

10. Auxiliary requests 1a, 2a, 3a, 4a, 5a, 6a, 7a, 8a, 9a and 10a

Claims 1 of auxiliary requests 1a, 2a, 3a, 4a, 5a, 6a, 7a, 8a, 9a and 10a are identical to claims 1 of

auxiliary requests 1 to 10, respectively. The reasons given in respect of the subject-matter of claims 1 of auxiliary requests 1 to 10 thus equally apply to the subject-matter of claims 1 of auxiliary requests 1a to 10a. The requests are therefore not allowable.

11. There being no allowable request, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Rauh F. van der Voort

Decision electronically authenticated