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Datasheet for the decision of 4 July 2013

Case Number: T 2280/12 - 3.5.04

Application Number: 09380078.7

Publication Number: 2111043

IPC: H04N7/24, H04H60/27, H04H60/13

Language of the proceedings: EN

Title of invention:
Method of transmitting audiovisual contents in 'push' environments

Applicant:
Motive Television, S.L.

Headword:

Relevant legal provisions:
EPC Art. 54

Keyword:
Novelty - after amendment

Decisions cited:

Catchword:

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Case Number: T 2280/12 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 4 July 2013

Appellant: (Applicant)	Motive Television, S.L. Avenida Diagonal 177, 1. 08018 Barcelona (ES)
Representative:	Durán Moya, Luis-Alfonso Durán-Corretjer Còrsega, 329 08037 Barcelona (ES)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 21 June 2012 refusing European patent application No. 09380078.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: F. Edlinger
Members: R. Gerdes
B. Müller

Summary of Facts and Submissions

I. The appeal is directed against the decision to refuse European patent application No. 09 380 078.7.

II. The patent application was refused by the examining division on the grounds that the subject-matter of claim 1 of the sole request was not new (Article 54(1) and (2) EPC) in view of document

D1: WO 01/63873 A2.

In an obiter dictum to the decision under appeal the examining division also stated that dependent claims 2, 4, 7 and 9 contained subject-matter that extended beyond the content of the application as filed (Article 123(2) EPC).

III. The applicant appealed against this decision and requested in the statement of grounds of appeal as a main request that the decision under appeal be set aside, that the appeal fee be reimbursed and that the application be remitted to the examining division for further prosecution. As an alternative, the appellant requested the grant of a patent on the basis of claims according to one of first to third auxiliary requests submitted together with the statement of grounds. As a further auxiliary measure, it requested oral proceedings before the board.

IV. The board indicated in a communication annexed to the summons to oral proceedings that it was not convinced that procedural violations had occurred in the first-instance proceedings. The board also indicated that it shared the opinion of the examining division with respect to lack of novelty of claim 1 according to the

first auxiliary request. It also noted that claim 1 of the second auxiliary request related to subject-matter extending beyond the content of the application as filed. In the board's provisional opinion the subject-matter of claim 1 according to the third auxiliary request was new with respect to D1.

V. With a letter dated 3 May 2013 the appellant withdrew its main request as well as the first and second auxiliary requests and re-submitted the claims according to the previous third auxiliary request as its "new main request". The appellant requested that the application be remitted to the first instance for further prosecution without holding oral proceedings.

VI. The independent claims of the "new main request" (i.e. the appellant's sole request) read as follows:

"1. Method for transmitting audiovisual contents in push environments, in which a transmitter transmits to a set of receivers (77) a transmission signal in DVB-T transmissions which comprises at least a channel of audiovisual contents and a data channel associated therewith, which uses a maximum of 20% of the bandwidth of the audiovisual channel characterised in that the transmitter transmits via the data channel at least one audiovisual content and a recording instruction for a receiver (77) of the audiovisual content introduced in the data channel."

"5. System for the transmission of audiovisual contents in push environments, which comprises at least a broadcaster (72) which provides audiovisual contents for transmission and metadata to a network operator (73) which transmits them by means of a transmission signal comprising at least an audiovisual contents

channel and a data channel containing the metadata, and at least a receiver (77) which receives the transmission signal, comprising at least a tuner (771) and a hard disk (773) for recording audiovisual contents, characterised in that the network operator (73) transmits via the data channel at least one audiovisual content together with a recording instruction for the receiver (77) introduced in the data channel, and in that the receiver (77) comprises at least a second tuner (772) and an analyser of the signal received for interpreting the instruction or instructions contained in the data channel."

Claims 2 to 4 and 6 to 9 are dependent on claims 1 and 5 respectively.

VII. The examining division stated in the decision under appeal that there was no technical difference between a "channel of audiovisual contents" and a "data channel". The claims then on file were "anything but limited to special channels in an MPEG2 environment." Nor did claim 1 contain any features making it possible to technically distinguish the environment of D1 from the "push environment" in claim 1. Claim 1 did not state "what is encompassed by a 'push environment' and what falls outside its scope." The examining division summarised its view with respect to the interpretation of the expressions in claim 1 as "The technical differences between a data channel and a channel of audio visual contents are not articulated in independent claim 1. The terms channel and data channel appear to label data sets without providing any technical distinction" (see decision under appeal, points 2.2.1, 2.2.3 and 2.2.5).

VIII. The appellant's arguments with respect to novelty of the subject-matter of present claim 1 may be summarised as follows:

D1 shows a return channel and hence a bidirectional transmission from the transmitter to the receiver, whereas the present application refers to a "push environment" which excludes such bidirectional communication.

The skilled person would also have identified the technical differences between a "channel for audiovisual content" and a "data channel". It was unambiguously explained in the description that each DTT channel (channel of audiovisual content) according to the MPEG2 standard had an associated data channel. Moreover, this data channel could use a maximum of 20% of the bandwidth of a DTT channel. In D1 there was no disclosure of the kind of channel over which the data was transmitted (see statement of grounds, page 5).

Reasons for the Decision

1. The appeal is admissible.

2. Amendments, Article 123(2) EPC

2.1 Present claims 1 to 9 are based on claims 1 to 4 and 6 to 10 as originally filed. Claim 1 has been amended to additionally specify that the transmission signal is transmitted "in DVB-T transmissions" and that the data channel "uses a maximum of 20% of the bandwidth of the audiovisual channel". These amendments are based on page 1, lines 9 to 28; page 5, line 25 to page 6,

line 1 and page 7, lines 4 to 11. In addition, the expression "transmission receiver" in claim 1, line 6 as filed has been shortened to "receiver", in line with the previous reference in line 2 of the claim.

The expression "data frame" in claims 2, 4, 6 and 8 was objected to by the examining division in an *obiter dictum* (see decision under appeal, point 4). Even though it is correct that the expression "data frame" was not explicitly used in the application as filed, the board sees no reason why this amendment would change the overall information that the skilled person would directly and unambiguously derive from the application as filed. It is implicit in the application as filed that all frames serve to transmit digital data.

2.2 Consequently, the board raises no objection under Article 123(2) EPC.

3. Novelty, Article 54(1) and (2) EPC 1973

3.1 D1 discloses a method for transmitting audiovisual content such as news headlines, songs, voice mails, video messages or movies from a transmitter to a set of receivers. In order to reduce costs for the transmission of content "that a user has specifically asked for or ... that may be of interest to him" and to be able to employ a network having relatively low transmission capacity, the transmission is scheduled to be effected "during the times that the load of the network is relatively low" (see page 1, lines 11 to 28, and page 2, line 13 to page 3, line 3).

D1 also discloses that a recording instruction (storage control information) may be transmitted together with

the content information to indicate "which (parts of the) content information 13 have to be stored by the storage means 16" (see page 4, lines 20 to 26).

3.2 D1 refers to a cable television network or a mobile phone network as transmission media (see page 2, lines 23 to 25; page 3, lines 5 to 13 and page 4, lines 14 to 19). It discloses neither that the transmitter transmits a transmission signal in DVB-T transmissions nor that the data channel associated with a channel of audiovisual content uses a maximum of 20% of the bandwidth of the audiovisual channel. Hence, the board finds that the subject-matter of claim 1 is new with respect to D1.

4. Remittal (Article 111(1) EPC 1973)

4.1 The decision under appeal was based solely on lack of novelty of claim 1 then on file. This reason does not apply to the subject-matter of the present claims and the decision under appeal must consequently be set aside. However, a patent cannot be granted at the present stage of the proceedings without examining the claimed subject-matter for compliance with the further requirements of the EPC. Such examination has not yet been carried out by the department of first instance for the present set of claims.

4.2 Under these circumstances the board, following the appellant's request, exercises its discretion under Article 111(1) EPC 1973 in remitting the case to the department of first instance for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution.

The Registrar: The Chairman:

K. Boelicke F. Edlinger

Decision electronically authenticated