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**Datasheet for the decision
of 15 January 2018**

Case Number: T 2330/12 - 3.5.07
Application Number: 10158507.3
Publication Number: 2202745
IPC: G11B20/10, G11B27/10, H04N5/93
Language of the proceedings: EN

Title of invention:

A reproducing apparatus, a reproducing method, a recording medium, a control program and a computer-readable recording medium

Applicant:

Sharp Kabushiki Kaisha

Headword:

Reproducing apparatus/SHARP

Relevant legal provisions:

EPC Art. 76(1), 84, 123(2)

Keyword:

Amendments - main request and first auxiliary request - added subject-matter (yes)
Claims - clarity - first auxiliary request (no)



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Case Number: T 2330/12 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 15 January 2018

Appellant: Sharp Kabushiki Kaisha
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 14 May 2012
refusing European patent application No.
10158507.3 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman R. Moufang
Members: R. de Man
M. Jaedicke

Summary of Facts and Submissions

- I. The applicant (appellant) appealed against the decision of the Examining Division refusing European patent application No. 10158507.3.
- II. The application was filed in English as a divisional application of European patent application No. 04792222.4 (the parent application), which was filed as international application PCT/JP2004/014954 and published in Japanese as WO 2005/036544 and in English as EP 1 679 706 A1.
- III. The Examining Decision decided that the main and first auxiliary requests did not comply with Article 123(2) EPC and that the subject-matter of claim 1 of the second auxiliary request lacked inventive step.
- IV. With the statement of grounds of appeal, the appellant resubmitted the main request and filed an amended first auxiliary request based on the second auxiliary request considered in the decision under appeal.
- V. In a communication accompanying a summons to oral proceedings, the Board *inter alia* raised objections under Articles 76(1), 84 and 123(2) EPC, specifically requested that the appellant provide it with detailed indications of a basis in the parent application for the claims of both requests and asked the appellant to be prepared to discuss aspects of added subject-matter and clarity not explicitly raised in the communication.
- VI. By letter of 11 December 2017, the appellant informed the Board that it did not plan to attend the oral proceedings.

VII. Oral proceedings were held on 15 January 2018 in the appellant's absence. At the end of the oral proceedings, the chairman pronounced the Board's decision.

VIII. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, in the alternative, on the basis of the claims of the first auxiliary request.

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

"A reproducing apparatus (1') for reproducing content, comprising:

data acquiring means (50) configured to acquire (i) a first content including video data and a first program to be executed in synchronization with the video data, and (ii) a second content including a second program:

decoding means (24) configured to decode the video data; and

program executing means (70) configured to execute the first program and the second program,

the reproducing apparatus being characterized in that

the second program being adapted to refer to (i) program specifying information for specifying the first program and (ii) play list information indicating an order in which video data is reproduced, and

during reproduction of the second content, the program executing means (i) starts reproduction of the first content by executing the first program specified by the program specifying information referred by the second program which is in execution and (ii) instructs the decoding means (24) to start decoding the video

data in the order indicated by the play list information referred by the second program which is in execution."

X. Claim 1 of the first auxiliary request reads as follows:

"A reproducing apparatus (1') for reproducing content, comprising:

data acquiring means (50) configured to acquire (i) a first content including video data and a first program to be executed in synchronization with the video data, and (ii) a second content including a second program;

decoding means (24) configured to decode the video data; and

program executing means (70) configured to execute the first program and the second program,

the reproducing apparatus being characterized in that

the program executing means (70), which has executed the second program, refers to program management information of the first program, the program management information being stored in a place other than the first program, and

the program executing means (i) starts reproduction of the first content by executing the first program and (ii) instructs the decoding means (24) to start decoding the video data in an order indicated by play list information contained in the program management information, such that (i) preparation for reproducing the video data and (ii) preparation for executing the first program are concurrently carried out."

- XI. The appellant's arguments as relevant to the decision are discussed in detail below.

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

2. *The invention*

The application relates to a reproducing apparatus for reproducing content, including video data and programs. The content is acquired from a content-recording medium such as an optical disk by means of a "data acquiring means". The apparatus includes a "decoding means" for decoding video data and a "program executing means" for executing programs.

3. *Main request*

- 3.1 During the first-instance proceedings, the appellant replaced page 95 of the application as filed to correct a mistranslation of the original PCT application. However, the present divisional application was filed in the English language, and it is therefore this English text, including any mistranslations it may contain, that is the "application as filed" for the purpose of assessing compliance with Article 123(2) EPC. The correction of the mistranslation is relevant only for determining the content of the parent application in the context of Article 76(1) EPC.

3.2 "Adapted to refer" - Article 123(2) EPC

3.2.1 According to claim 1 of the main request, the reproducing apparatus is configured to acquire a first content and a second content. The first content includes video data and a first program to be executed in synchronisation with the video data. The second content includes a second program which is "adapted to refer to (i) program specifying information for specifying the first program and (ii) play list information indicating an order in which the video data is reproduced".

3.2.2 Claim 1 of the application as filed included the feature "a second program which stores (a) program specifying information which specifies the first program and (b) play list specifying information which specifies the play list". The current formulation was introduced by an amendment filed with the letter of 1 February 2012, which referred to the description on page 94, line 22, to page 95, line 5, as a basis.

However, this passage of the description discloses that "[i]n cases where the program executing section 70 carries out the interpretation, the program management information corresponding to a program *a* is stored in another program *b*". Since the program-management information includes a "program_file_name" field specifying a program (see page 77, line 20, to page 78, line 3, and Figure 22(b)), the passage discloses that "program *b*" may *include* program-specifying information, not that it may *refer to* program-specifying information.

Since the Board has not been able to identify any other basis for the amendment in the application as filed, it

comes to the conclusion that the amendment extends beyond the content of the application as filed (Article 123(2) EPC).

3.3 *"During reproduction" - Article 123(2) EPC*

3.3.1 Claim 1 further specifies that "during reproduction of the second content, the program executing means (i) starts reproduction of the first content by executing the first program specified by the program specifying information referred by the second program which is in execution". In its decision, the Examining Division considered this feature to infringe Article 123(2) EPC.

3.3.2 The feature essentially states that during execution of the second program (i.e. reproduction of the second content), the program-executing means starts reproduction of the first content by executing the first program. Claim 1 of the application as filed included the feature "program executing means for executing the second program and thereafter (i) starting executing the first program specified by the program specifying information stored in the second program which is in execution", i.e. "thereafter" and not "during".

3.3.3 In the statement of grounds of appeal, the appellant argued that the feature objected to by the Examining Division was disclosed on page 94, line 17, to page 95, line 11. That passage described the case where program-management information was interpreted by the program-executing section, and it was clear that that interpretation was carried out during the execution of a program, as the program-executing section was configured to carry out video-reproduction control such

as the starting of decoding on the basis of the program being executed.

3.3.4 The passage on page 94, line 17, to page 95, line 11, reads as follows:

"Further, in the present embodiment, the general control section 80 interprets and transmits the various types of information contained in the program management information; however, another function block such as the program executing section 70 may interpret and transmit the various types of information. In cases where the program executing section 70 carries out the interpretation, the program management information corresponding to a program *a* is stored in another program *b*. Therefore, just before executing the program *a*, the program executing section 70 interprets and transmits the program management information which corresponds to the program *a*, and which is contained in the program *b*[.] This makes it possible to realize the same function as that in the case where the general control section 80 carries out the interpretation and the transmission. In other words, the feature of the present invention lies in that program management information relevant to a program is stored in a place irrelevant to the program."

Hence, this passage discloses that in some embodiments, program-management information (which includes program-specifying information) for a first program *a* may be stored in another second program *b*. In this case, the program-management information is interpreted by the program-executing section "just before executing the program *a*".

The Board is not necessarily convinced by the appellant's argument that interpretation of the program-management information contained in program *b* means that program *b* is executed: the program-management information could, for example, be interpreted by the program-executing section before or after the execution of the program instructions making up program *b*, or independent of their execution. But even accepting the argument, the cited passage does not disclose that the first program is executed "during reproduction of the second content", i.e. during execution of the second program; it only discloses that the program-management information is interpreted and - arguably - the second program executed "just before" the first program is executed.

This interpretation of the passage cited by the appellant is in line with claim 1 as originally filed ("thereafter") and also with the passage on page 93, line 16, to page 94, line 24. This passage discloses that "during reproduction of a content which consists of a program and which does not have any video data to be reproduced", "the video reproduction preparation for the content coming just after the content is caused to start during the reproduction of the content consisting of the program". Hence, reproduction *preparation* of the subsequent (first) content is started *during* reproduction of the current (second) content, but the actual reproduction starts *just after* reproduction of the current content has finished.

- 3.3.5 The Board is aware of originally filed independent method claim 2 of the present application, which recites a step (B) of "executing the second program acquired in the step (A)" and a step (C) of "(i) starting executing the first program specified by the

program specifying information stored in the second program which is in execution, and ...".

Compared with originally filed independent apparatus claim 1, which includes the word "thereafter", this claim does not explicitly state that step (C) is performed *after* step (B). And conventionally, such a temporal restriction is not implied by the mere fact that step (C) is listed after step (B). Since step (C) refers to program-specifying information "stored in the second program which is in execution", the argument could be made that originally filed claim 2 discloses that "starting executing the first program" takes places *during* execution of the second program/reproduction of the second content.

However, when assessing what an originally filed claim discloses, the claim has to be interpreted in the light of the application as a whole. Since the description confirms that "starting executing the first program" is performed *after* "executing the second program", as claim 1 explicitly states, the Board considers that the skilled person would read originally filed independent claim 2 as including a temporal restriction in the sense that step (C) is performed *after* step (B).

- 3.3.6 The Board concludes that the feature "during reproduction of the second content, the program executing means (i) starts reproduction of the first content by executing the first program ..." is not directly and unambiguously derivable from the application as filed, as required by Article 123(2) EPC.

3.4 *Article 76(1) EPC*

For the sake of completeness, the Board notes that the above-mentioned two features that offend against Article 123(2) EPC also infringe Article 76(1) EPC. Indeed, none of the claims of the parent application relates to a second program referring to (or even including) program-management information of a first program, and the English translation of its description corresponds to the originally filed description of the present application. Although the correction of the alleged mistranslation on page 95 proposed by the appellant is relevant for determining the content of the parent application, it makes only the following (underlined) change: "Therefore, just before executing the program *a*, at the program executing section 70, the program *b* interprets and transmits the program management information which corresponds to the program *a*, and which is contained in the program *b*".

4. *First auxiliary request*

4.1 The reproducing apparatus of claim 1 of the first auxiliary request is again configured to acquire a first content and a second content. The first content includes video data and a first program to be executed in synchronisation with the video data. The second content includes a second program. Unlike claim 1 of the main request, claim 1 of the first auxiliary request does not specify that the second program includes or refers to information about the first program.

4.2 *Clarity - Article 84 EPC*

4.2.1 Claim 1 of the first auxiliary request includes the following features:

"the program executing means (70), which has executed the second program, refers to program management information of the first program, the program management information being stored in a place other than the first program".

4.2.2 The Board considers the feature "the program executing means, which has executed the second program" to be unclear because it is not apparent what technical limitation it imposes on the claimed reproducing apparatus or its program-executing means. In particular, the claim does not relate the second program or its execution to the "program management information of the first program" mentioned immediately after "which has executed the second program" or to any other feature of the claim. And even if no such limitation was intended, its presence in the claim still casts doubt on the scope of protection of claim 1.

4.3 *Article 123(2) EPC*

4.3.1 The feature of claim 1 "the program management information being stored in a place other than the first program" is not present in the original claims of the present application. In the statement of grounds of appeal, the appellant gave page 95, lines 8 to 11, as a basis for this amendment.

4.3.2 The application as filed discloses that program-management information may be stored in a program-

management table separate from the programs (see page 77, lines 12 to 14, page 82, lines 4 to 16, and Figures 22(a) and 23), in which case it is processed by a "general control section" of the reproducing apparatus (see Figure 24 and its description on page 83, line 3, to page 85, line 15). Alternatively, the program-management information for a program *a* may be stored in another program *b*, in which case it is processed by the program-executing means (see page 94, line 17, to page 95, line 11).

4.3.3 The sentence referred to by the appellant is the last sentence of the passage on page 94, line 17, to page 95, line 11 (quoted in point 3.3.4 above): "In other words, the feature of the present invention lies in that program management information relevant to a program is stored in a place irrelevant to the program". It is clear from this passage, read in the light of the application as a whole, that what is meant is that "program management information relevant to a program" may be stored, not in the program-management table, but in another program. In particular, there is no indication in this passage, or in the application as filed, that "in a place irrelevant to the program" is to be understood as "in a place other than the program".

4.3.4 Hence, the application as filed does not provide a basis for the claim feature "the program management information being stored in a place other than the first program". The first auxiliary request therefore does not comply with Article 123(2) EPC.

5. *Conclusion*

Since neither request is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



I. Aperribay

R. Moufang

Decision electronically authenticated