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**Datasheet for the decision
of 28 August 2018**

Case Number: T 1253/13 - 3.5.04

Application Number: 02724528.1

Publication Number: 1437001

IPC: H04N7/173

Language of the proceedings: EN

Title of invention:

Automatic selection of favorite media selections of a user of
an media presentation device

Applicant:

S.I.SV.EL. SOCIETA' ITALIANA PER LO SVILUPPO
DELL'ELETTRONICA S.P.A.

Headword:

Relevant legal provisions:

RPBA Art. 13(1)

Keyword:

Late-filed request - amendments after arrangement of oral
proceedings - admitted (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1253/13 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 28 August 2018

Appellant:
(Applicant)

S.I.SV.EL. SOCIETA' ITALIANA PER LO SVILUPPO
DELL'ELETTRONICA S.P.A.
Via Sestriere 100
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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 30 January 2013
refusing European patent application
No. 02724528.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman C. Kunzelmann
Members: R. Gerdes
B. Müller

Summary of Facts and Submissions

- I. The appeal is directed against the decision to refuse European patent application No. 02 724 528.1, published as international application WO 02/087243 A2.
- II. The examining division refused the patent application on the grounds that:
- (a) the subject-matter of the claims of the main and the first auxiliary requests lacked inventive step (Article 56 EPC)
 - (b) the claims of the second auxiliary request contravened Article 123(2) EPC.
- III. The applicant filed notice of appeal against this decision, requesting that it be set aside. It submitted claims of a main request and first and second auxiliary requests with the statement of grounds of appeal. These sets of claims were essentially identical to those of the requests underlying the decision under appeal.
- IV. The board issued a summons to oral proceedings and, in an annex to it, expressed doubts that the subject-matter of the independent claims of all of the appellant's requests involved an inventive step. The board based its reasoning on the following document among others:
- D6: US 5 801 747 A1.
- V. The appellant replied by letter dated 13 July 2018 and submitted amended claims according to a main and sole request replacing all the requests then on file.

VI. Oral proceedings were held before the board on 28 August 2018. As it had announced beforehand, the appellant did not attend.

The Chairman noted that the appellant had requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main and sole request filed with the letter dated 13 July 2018.

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

"A method of generating a list of favorite media selections of a user of a media presentation device offering a plurality of media selections, wherein the favorite selection list is referenced upon receipt of a scan command by the media presentation device to scan through N selections on the favorite selection list, pausing at each of the N selections until the scan command is discontinued, the method automatically generating the list of favorite media selections by:

recording for each of a plurality of selections a total time which the media presentation device has selected the each of the plurality of selections over a particular period of time; and

generating a favorite selection list comprising N selections of the plurality of selections which the media presentation device has most frequently selected as determined from the recorded total time each of the plurality of selections has been selected over the particular period of time, wherein N is a predetermined number of selections that may be included on the favorite selection list and wherein said recorded total time does not comprise the time it takes to scan

through the media selections where the scan feature is used;

characterized in that said recording comprises the steps of:

recording the start time of the media selection for which the tuner was tuned upon discontinuing said scan command;

recording the stop time of said media selection upon receipt of said scan command; and calculating the total time for said current selection."

VIII. The appellant's arguments, as far as relevant to the present decision, may be summarised as follows:

Claim 1 had been amended to incorporate the feature "wherein the recorded total time does not comprise the time it takes to scan through the channels where the scan feature is used to get to the selected channel". Support for this feature could be found on page 5, lines 2 to 5, of the application as filed. This feature referred to implementations of the invention where the scan time was not assumed to be negligible.

Claim 1 had been further amended to specify "that said recording comprises the steps of:
recording the start time of the media selection for which the tuner is tuned upon discontinuing said scan command;
recording the stop time of said media selection upon receipt of said scan command; and calculating the total time for said current selection."

Support for this feature could be found in figure 5 and on page 5, lines 2 to 5, of the application as filed.

Regarding inventive step, D6 taught a method for setting a time threshold (i.e. viewing unit) so as to ignore insignificant viewings (i.e. selections characterised by viewing times shorter than the viewing unit). That solution would not have led the person skilled in the art to the invention in the present case. In fact, the method disclosed in D6 strictly depended on the definition of the viewing unit. If the viewing unit was shorter than the period of time that elapsed during execution of the scan command (i.e. evaluation time), then "the time it takes to scan through the channels" would not be disregarded (as happened in the invention in the present case, by contrast). If the viewing unit was set to a longer value, the goal of recording each and every selection by a user would not be achieved. In other words, by disregarding any selection characterised by a viewing duration shorter than a viewing unit, the system disclosed in D6 did not take into account each and every selection by the user. The resulting viewing times computed by D6 were therefore less accurate than the "total time" computed according to the claimed method.

Reasons for the Decision

1. The appeal is admissible.

2. According to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal may be admitted and considered at the board's discretion. This discretion is exercised in view of

inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. Further, according to Article 15(3) RPBA, the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned, who may then be treated as relying only on its written case.

2.1 Claim 1 of the main request was filed by letter dated 13 July 2018 in reply to the summons to oral proceedings. It was filed so late that an in-depth discussion thereof with the appellant could only have taken place at the oral proceedings before the board. Essentially, the new claim 1 differs from claim 1 of the main request as filed with the statement of grounds in that it contains the following additional features:

"... and wherein said recorded total time does not comprise the time it takes to scan through the media selections where the scan feature is used; characterized in that said recording comprises the steps of:
recording the start time of the media selection for which the tuner was tuned upon discontinuing said scan command;
recording the stop time of said media selection upon receipt of said scan command; and
calculating the total time for said current selection."

In part these additional features correspond to features that were included in claim 1 of the first auxiliary request filed with the statement of grounds. That claim specified a step of "recording (131, 132) a start time and an end time for selecting the selection, and calculating (133) a total time that the particular

selection has been selected during the particular period of time based on the recorded start and end times". However, the new claim 1 refers to start and stop times, and not start and end times, as claim 1 of the previous first auxiliary request did. In addition, the new claim 1 employs a different wording for defining the start and stop times, which makes reference to the scan command.

Hence, the new claim 1 is an amendment to the appellant's case within the meaning of Article 13(1) RPBA.

2.2 This new claim 1 leads to a number of complex issues concerning claim construction, clarity (Article 84 EPC 1973) and the original disclosure (Article 123(2) EPC). Claim 1 specifies steps for recording a start and a stop time of a media selection. The steps refer to the same ("said") media selection. In addition, claim 1 specifies that the start time is recorded "upon discontinuing said scan command", whereas the stop time is recorded "upon receipt of said scan command". Construing the claim literally, this means that the recorded total time of the media selection is taken as the time between discontinuing a scan command and receipt of the same ("said") scan command, resulting in a negative total time. Moreover, if the start and stop times were reversed to designate the time between "receipt of said scan command" and "discontinuing said scan command", such recording would reflect the time it takes to scan through the favourite channels and not the total time a media selection has been selected.

Even if claim 1 were construed so that the stop time referred to the next (instead of "said") scan command, the total time would be recorded as the time between

discontinuing a scan command and the receipt of the next scan command. This would correspond to the very specific situation that the media selection (such as a program) were selected by discontinuing a scan of the favourite selection list and then ended by issuing a next scan command. However, there is no discussion in the application as to why ending the selection by issuing a next scan command should be distinguished from ending it by some other command, such as switching off the device. Moreover, it is questionable whether such a calculation of the total time is directly and unambiguously derivable from the application as filed (Article 123(2) EPC).

- 2.3 In its letter of 13 July 2018, the appellant did not submit arguments relating to the issues discussed in point 2.2 above. However, it did argue that support for the amendments to claim 1 of the main request could be found in figure 5 and on page 5, lines 2 to 5, of the application as filed.

The board considers the passage on page 4, line 32, to page 5, line 5, together with figures 4 and 5, to be ambiguous. According to figures 4 and 5, start and stop times are recorded at step 132 after discontinuing a previous scan command (step 120) or selecting a channel (step 125). According to these figures, the time it takes to scan through the channels is not necessarily disregarded. For example, a scan command (step 100 in figure 4) being executed after viewing a media selection would delay recording the end time for the media selection. This would be contrary to the statement that "this measurement does not account for the time it takes to scan through the channels where the scan feature is used to get to the selected channel" (see page 5, lines 2 to 4). Thus, the parts of

the application adduced by the appellant do not clarify how the claim is to be construed and thereby further increase the complexity of the issues discussed in point 2.2 above.

- 2.4 It also appears to the board that claim 3 is in conflict with claim 1. Claim 3 specifies a different rule for how to calculate the total time of a media selection. It is questionable whether the end time referred to in that claim is equivalent to the stop time of claim 1. It is also questionable whether the total time of claim 3 comprises the time it takes to scan through the media selections or not.
- 2.5 It follows from the above that claim 1 of the amended main request introduced a number of new, complex issues at a late stage of the appeal proceedings. This was not appropriate from the point of view of procedural economy. The issues could not be dealt with in the absence of the appellant.
- 2.6 In view of the above, the board has decided not to admit the main request into the appeal proceedings in application of Article 13(1) RPBA.
3. For the sake of completeness, the board notes *obiter* that - as far as claim 1 can be understood - its subject-matter lacks an inventive step in view of D6 and the common general knowledge of the skilled person (Article 56 EPC 1973). As correctly argued by the appellant, D6 teaches a method for setting a time threshold so as to ignore insignificant viewings (see point VIII above). It would have been obvious to set the threshold such that media selections during execution of the scan command were not taken into account for the recorded total time, in particular

since D6 explicitly refers to short viewing durations resulting from "surfing through numerous channels" (see column 3, line 65, to column 4, line 1).

4. Since there is no further, allowable request, the appeal must 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