Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 31 January 2019

Case Number: T 1549/13 - 3.5.04

Application Number: 08167721.3

Publication Number: 2034726

IPC: H04N7/16, H04N5/76

Language of the proceedings: EN

Title of invention:
Systems and methods for interactive program guides with personal video recording features

Applicant:
Rovi Guides, Inc.

Headword:

Relevant legal provisions:
EPC Art. 84

Keyword:
Claims - clarity - all requests (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1549/13 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 31 January 2019

Appellant: (Applicant)	Rovi Guides, Inc. 2160 Gold Street San Jose, CA 95002 (US)
Representative:	Pisani, Diana Jean Haley Guiliano International LLP Central Court 25 Southampton Buildings London WC2A 1AL (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 27 March 2013 refusing European patent application No. 08167721.3 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairwoman	T. Karamanli
Members:	B. Willems
	R. Gerdes

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division dated 27 March 2013 refusing European patent application No. 08 167 721.3 pursuant to Article 97(2) EPC.

The present application is a divisional application to European patent application No. 02 719 258.2 (earlier application), which was filed as international application and published as WO 02/069636 A1.

II. The documents cited in the decision under appeal included the following:

D6: WO 02/03682 A2.

III. The application was refused on the grounds that the claims of the then main (and sole) request did not meet the requirements of Articles 84 and 76(1) EPC.

In an *obiter dictum* (see section "*C Further Remarks*" of the decision under appeal), the examining division expressed its view that none of the priority claims for the subject-matter of claim 1 were valid, that document D6 belonged to the state of the art under Article 54(2) and (3) EPC, and that D6 was novelty-destroying prior art for the claimed subject-matter.

IV. The applicant filed notice of appeal. With the statement of grounds of appeal, the appellant submitted claims according to a main request which, according to the appellant, were presented to the examining division on 26 February 2013. The appellant also filed claims according to an auxiliary request and submitted reasons

as to why the claims of both requests met the requirements of Articles 54, 56, 76(1) and 84 EPC.

V. The board issued a summons to oral proceedings. In a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536) annexed to the summons, the board noted that the claims of the main request filed with the grounds of appeal did not fully correspond to those of the main request forming the basis for the decision under appeal and asked the appellant to clarify its requests. The board gave its provisional opinion that:

(a) claim 1 of the main request was ambiguous and did not meet the requirements of Article 84 EPC,

(b) claim 1 of the main request did not meet the requirements of Articles 76(1) and 123(2) EPC because neither the earlier application as filed nor the present application as filed provided a clear and unambiguous basis for claiming *"program parameter"* in combination with "*delete priority order*",

(c) claim 1 of the auxiliary request did not meet the requirements of Articles 76(1) and 123(2) EPC because neither the earlier application as filed nor the present application as filed provided a clear and unambiguous basis for specifying that "*each of the recorded programs is associated with one of a plurality of types within a program parameter, wherein a program parameter is one of program type, channel type, broadcast type, and series*",

(d) claim 1 of the auxiliary request did not meet the requirements of Article 84 EPC because it was ambiguous which "*types within the program parameter*" the user could select to set a delete priority.

The board also indicated that should the appellant succeed in convincing the board that the claims of any of the requests on file clearly defined a multiple "level" process as illustrated by Figures 51 to 55B it would be minded to exercise its discretion under Article 111(1) EPC and remit the case to the department of first instance for further prosecution.

VI. By letter dated 21 December 2018, the appellant filed amended claims according to a main request and first and second auxiliary requests and amended description page 119. The appellant submitted that the main request and first auxiliary request replaced the main request and first auxiliary request filed by letter dated 3 July 2013, and requested that the application be remitted to the examining division for further prosecution. It stated that substituting "*Other types of parameters*" by "*Other parameters*" on page 119 clarified the description in relation to the use of the term "*type*" and provided arguments as to why the amended claims met the requirements of Articles 84, 76(1) and 123(2) EPC.

VII. On 30 January 2019 and 31 January 2019, the board held oral proceedings.

The appellant's final requests were that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of the claims according to the

main request, or in the alternative, on the basis of the claims according to the first or second auxiliary request, all requests filed with the letter dated 21 December 2018.

At the end of the oral proceedings, the chairwoman announced the board's decision.

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

"A method of managing recorded programs, comprising:

storing the recorded programs on a personal video recorder, wherein each of the recorded programs is associated with one of a plurality of types within a program parameter;

receiving a user selection of a delete priority setting for the types within the program parameter, thereby assigning a delete priority order to the recorded programs according to the types within the program parameter, wherein the delete priority order defines the order in which the types of recorded programs will be deleted; and

automatically deleting the recorded programs from the personal video recorder to manage storage space when space is needed to record a program, based on the delete priority order."

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

"A method of managing recorded programs based on a program characteristic, the program characteristic including one of:

a plurality of program types;
a plurality of channel types; and
a plurality of broadcast types;

the method, comprising:

storing the recorded programs on a personal video recorder, wherein each of the recorded programs is associated with one type in the plurality of types included in the program characteristic;

receiving a user selection of a delete priority setting for the types included in the program characteristic, thereby assigning a delete priority order to the recorded programs according to the plurality of types included in the program characteristic, wherein the delete priority order defines the order in which recorded programs associated with the types will be deleted; and

automatically deleting the recorded programs from the personal video recorder to manage storage space when space is needed to record a program, based on the delete priority order."

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

"A method of managing recorded programs based on a program characteristic, the program characteristic including one of:

a plurality of program types; and
a plurality of broadcast types;

the method, comprising:

storing the recorded programs on a personal video recorder, wherein each of the recorded programs is associated with one type in the plurality of types included in the program characteristic;

receiving a user selection of a delete priority setting for the types included in the program characteristic, thereby assigning a delete priority order to the recorded programs according to the plurality of types included in the program characteristic, wherein the delete priority order defines the order in which recorded programs associated with the types will be deleted; and

automatically deleting the recorded programs from the personal video recorder to manage storage space when space is needed to record a program, based on the delete priority order."

XI. The examining division's objections, where relevant to the present decision, may be summarised as follows:

The term "*type*" was attributed different meanings in the claim and the description (see decision, Reasons, point 2.2.2).

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

(a) A person skilled in the art would understand from the description, page 119, lines 22 to 32, that the "*other types of parameters*" included "*program type*", "*broadcast type*" and "*channel types*" and Figures 54, 55A and 55B disclosed examples of

"*program type*", "*broadcast type*" and "*channel type*" (see statement of grounds of appeal, page 4, second full paragraph and letter dated 21 December 2018, pages 2 and 3, heading "*Article 84 EPC*").

The phrase "*types within the program parameter*" specifying that the types fell inside the bounds set by the "*program parameter*" was consistent with the description according to which there was a distinction between "*types of parameters*" and, within each parameter, a subset of "*types of programs*". The person skilled in the art would understand, from the cited passages, that "*program type*" was an example of a "*parameter*", and that the specific program types "*sports*", "*movies*", "*children*", "*adult*", "*sitcom*", etc. were types within that parameter (see letter dated 21 December 2018, page 3, first paragraph).

An interpretation of "*types*" as groups of parameters was not consistent with how the skilled person would understand page 119, lines 22 to 29 in its context (see letter dated 21 December 2018, page 2, last full paragraph).

(b) Substituting "*[o]ther types of parameters*" by "*[o]ther parameters*" on page 119, line 22, removed a possible interpretation of the term "*type*" (see also letter dated 21 December 2018, page 2, fourth paragraph).

(c) The hierarchy of steps for selecting a delete priority as illustrated on page 2 of the statement of grounds of appeal was apparent from the claims and page 119, lines 22 to 32, and the link between

"*program parameter*" and "*types*" was clear (see letter dated 21 December 2018, page 3, second full paragraph to page 4, first paragraph). On page 119, line 22, the introduction of the phrase "*[o]ther parameters*" was immediately followed by an example in which a user selected the "*program type delete by option*", in response to which the "*delete by program type display screen*" shown in Figure 54 was displayed. The list depicted in Figure 54 matched the examples of "*program types*" given on page 122, lines 17 to 29.

Page 119, lines 26 to 29, and page 123, lines 6 to 22 disclosed a user selecting a "*delete by broadcast type option*". The examples of "*broadcast type*" depicted in Figure 55A included examples from the list of "*types of broadcast*" on page 123, lines l5 to 17.

Page 119, lines 29 to 32, and page 123, line 23 to page 124, line 3 disclosed a user selecting a "*delete by channel option*". Figure 55B depicted a list of channels, identified by channel number and text.

(d) From the passages on pages 122 to 124 referred to in point (c) above, the person skilled in the art would understand what was meant by "*program type*", "*broadcast type*" and "*channel type*". The meaning of these terms was also clear from the dependent claims.

Reasons for the Decision

1. The appeal is admissible.

2. *Main request - Article 84 EPC*

2.1 According to Article 84 EPC, the claims "*shall be clear and concise*".

According to established case law, the clarity of a claim is not diminished by the mere breadth of a term contained in it, if the meaning of this term - either per se or in the light of the description - is unambiguous for a person skilled in the art (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, II.A.3.3).

2.2 Claim 1 specifies "*receiving a user selection of a delete priority setting for the types within the program parameter, thereby assigning a delete priority order to the recorded programs according to the types within the program parameter*" (emphasis added).

2.3 The board agrees with the examining division that claim 1 of the main request is ambiguous because the term "*type*" is attributed different meanings throughout the claims and the description (see section XI above).

2.4 The board does not agree with the appellant that substituting "*[o]ther types of parameters*" by "*[o]ther parameters*" removes the ambiguity (see point XII(b) above) arising from the different meanings attributed to "type" in claim 1 ("*types within the program parameter*") and in the description (page 119, lines 22

to 29: "*program type*" and "*broadcast type*").

2.5 Contrary to the appellant's opinion, an interpretation of "*types*" as groups of parameters is not inconsistent with how a skilled person would understand page 119, lines 22 to 29, i.e. that the "*types within the program parameters*" included "*program type*", "*broadcast type*" and "*channel types*" and Figures 54, 55A and 55B disclosed examples of "*program type*", "*broadcast type*" and "*channel type*" (see point XII(a) above).

The board is not persuaded that "*the program parameter*" includes "*program type*", "*broadcast type*" and "*channel type*". Whereas "*program type*" characterises, *inter alia*, the program (see Figure 54 and the description as filed, page 122, lines 27 to 29: "*Program types may include sports, movies, children, adult, sitcom, or other suitable program types*"), "*broadcast type*" and "*channel type*" rather specify how the program can be accessed (see the description as filed, page 123, lines 15 to 17: "*Types of broadcasts may include PPV, VOD, broadcast, cable, local access, and other suitable broadcast types*", and page 74, lines 29 and 30: "*cable channel, network, broadcast*"). The board does not agree with the appellant that the "*broadcast type*", e.g. whether a program is received via cable, is a characteristic of the recorded program. Therefore, the board does not consider "*broadcast type*" and "*channel type*" to be program parameters.

Moreover, Figure 55b shows channels identified by numbers and the examples given on page 119, lines 22 to 32, refer to "*channel*" rather than "*channel type*". The board is not convinced that the "*channel*" as such can be linked to any of the mentioned "*types*".

2.6 The board is not persuaded that the claims clearly specify the hierarchy of steps illustrated on page 2 of the statement of grounds of appeal and that the description establishes a clear link between setting an option and "*types within a program parameter*" (see point XII(b) above).

Page 119, lines 22 and 23, specifies that "*[o]ther parameters*", not another type of "*program parameter*" may be used to set the delete priority. Therefore, the paragraph starting on page 119, line 22, cannot establish a link between setting an option and the term "*program parameter*". Similarly, the "*title[s] at the top of the screen[s]*" of Figures 54, 55A and 55B do not identify "*program type*", "*broadcast type*" and "*channel type*" as "*program parameter*". Figure 51 shows a "*delete priority setup*" display screen which allows a user to select delete priority settings. The display screen includes a plurality of delete priority options, such as a "*delete by program type option*", a "*delete by broadcast type option*" and a "*delete by channel option*" (see description, paragraph bridging pages 118 and 119), without establishing a link between an "*option*" and a "*program parameter*".

2.7 Summarising, claim 1 is ambiguous because the inconsistent use of terms (type, parameter, program parameter, setting, option) in the application does not allow a person skilled in the art to determine which "*user selection*" is received.

2.8 In view of the above, the board concludes that claim 1 of the main request does not meet the requirements of Article 84 EPC.

3. *First and second auxiliary requests - clarity (Article 84 EPC*)

3.1 Claim 1 of the first and second auxiliary requests is ambiguous because the meanings of "*program type*", "*channel type*" and "*broadcast type*" are not clear in the context of the present application (Article 84 EPC).

The terms "*program type*", "*channel type*" and "*broadcast type*" do not have a well-defined technical meaning. "*Program type*" is normally used to denote a program genre such as news, sports, drama. "*Channel type*" can be understood as referring to characteristics of the physical channel, such as wireless channel, or referring to a free or pay TV channel. "*Broadcast type*" is often used to distinguish between television and radio broadcast.

In the description these terms are given different (additional) meanings.

According to page 63, lines 7 and 8, and page 74, lines 26 to 28, "*program types*" specify genre, such as news, movies, sports, but also pay per view (PPV).

According to page 123, lines 15 to 17, "*broadcast type*" may include PPV, VOD, broadcast, cable or local access. Thus, "*broadcast type*" specifies physical characteristics of the channel providing the program or whether the program is freely available or has to be paid for.

According to page 74, lines 29 and 30, and page 79, lines 27 to 29, "*channel types*" can be cable channel, network, broadcast, public access, premium, sports,

movie, news. Thus, "*channel type*" refers to physical characteristics of the channel (cable channel), indicates whether the channel is a free or pay TV channel (public access, premium) or specifies the genres of the programs on the channel (sports, movies, news).

Summarising, the program genre may be specified by "*program type*" or "*channel type*", the free or payable access to a program may be specified by "*program type*", "*channel type*" or "*broadcast type*", and the physical characteristics of the channel providing the program may be specified by "*channel type*" or "*broadcast type*".

3.2 Hence, neither the claim nor the description gives a clear and unambiguous definition of "*program type*", "*broadcast type*" and "*channel type*".

3.3 In view of the above, the board finds that claim 1 of the first and second auxiliary requests does not meet the requirements of Article 84 EPC because it is ambiguous on the basis of which user input the delete priority is set.

4. In the reasons of the decision under appeal, the examining division only dealt with the issues of clarity and added subject-matter. It follows from the above reasons that none of the claims of any of the appellant's requests fulfil the requirements of Article 84 EPC. Therefore, the board sees no reason to set aside the decision under appeal and to remit the case to the department of first instance, pursuant to Article 111(1) EPC. Consequently, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairwoman:

B. ter Heijden T. Karamanli

Decision electronically authenticated