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Datasheet for the decision of 14 February 2019

Case Number: T 1592/13 - 3.5.04

Application Number: 03775690.5

Publication Number: 1574057

IPC: H04N7/16

Language of the proceedings: EN

Title of invention:
APPARATUS AND METHOD FOR PREVENTING SWITCHING FROM A CHANNEL DURING AN ADVERTISEMENT DISPLAY

Applicant:
Koninklijke Philips N.V.

Headword:

Relevant legal provisions:
EPC 1973 Art. 84
EPC R. 103(1)(a)

Keyword:
Claims - clarity - all requests (no)
Reimbursement of appeal fee - (no)
Substantial procedural violation - (yes)

Decisions cited:
R 0008/15

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1592/13 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 14 February 2019

Appellant: (Applicant)	Koninklijke Philips N.V. High Tech Campus 5 5656 AE Eindhoven (NL)
Representative:	de Haan, Poul Erik Philips International B.V. Philips Intellectual Property & Standards High Tech Campus 5 5656 AE Eindhoven (NL)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 9 April 2013 refusing European patent application No. 03775690.5 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman	C. Kunzelmann
Members:	B. Willems
	B. Müller

Summary of Facts and Submissions

I. The appeal is against the decision of the examining division dated 9 April 2013 refusing European patent application No. 03775690.5, which was published as international application WO 2004/054259 A1.

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

D1: US 2001/054181 A1;

D3: EP 1 111 924 A;

D4: WO 01/76249 A.

III. The application was refused on the grounds that the subject-matter of the independent claims of the main request and the first auxiliary request extended beyond the disclosure of the application as filed (Article 123(2) EPC) and the subject-matter of the independent claims of the main and the first, third and fifth auxiliary requests lacked novelty over the disclosure of D1, D3 or D4 (Article 54 EPC). The second and fourth auxiliary requests were not admitted into the proceedings under Rule 137(3) EPC.

IV. The applicant filed notice of appeal. With the statement of grounds of appeal, the appellant requested that:

(a) the decision under appeal be set aside and a patent be granted on the basis of the claims of the main request, or alternatively, of the first, second or third auxiliary request, all requests submitted with the statement of grounds of appeal; or

(b) if a patent could not be granted on the basis of these requests, the case be remitted to the department of first instance for further prosecution.

Moreover, the appellant submitted that the examining division had failed to substantiate why the prior art disclosed the feature of "*exclusive access*". Thus, the decision was not reasoned within the meaning of Rule 111(2) EPC, and the insufficient reasoning constituted a substantial procedural violation. Therefore, the appeal fee should be reimbursed in accordance with Rule 103 EPC (see statement of grounds of appeal, points 28 and 46).

The appellant observed that the examining division's reasoning was based on a misinterpretation of the claims and concluded that, upon proper interpretation of the claims, the examining division's findings with respect to Articles 123(2) and 54(1) and (2) EPC were incorrect (see statement of grounds of appeal, points 10 and 14).

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 gave its provisional opinion that:

(a) The examining division neither cited any passages in D1, D3 or D4 which disclosed the feature of "*exclusive access*", nor addressed this feature in its arguments set out to counter the appellant's submissions. Disregarding the feature of "*exclusive access*" in the analysis and the corresponding arguments contravened Rule 111(2) and

Article 113(1) EPC and also constituted a fundamental deficiency within the meaning of Article 11 RPBA.

(b) The clarity objection raised in the board's communication constituted a special reason justifying not remitting the case to the department of first instance immediately.

(c) Claim 1 of none of the requests met the requirements of Article 84 EPC 1973. The feature "*to obtain exclusive access to one or more of said remote control key events for taking exclusive control*" defined a result to be achieved, but claim 1 did not comprise all essential features necessary for achieving this result. Although the description referred to the Multimedia Home Platform (MHP) standard, it did not set out mechanisms specified in the standard for allowing "*exclusive access*" to events.

(d) Should the appellant file amended claims which meet the requirements of Article 84 EPC 1973 or succeed in convincing the board that the claims of any of the requests on file meet the requirements of Article 84 EPC 1973, the board would be minded to remit the case to the department of first instance for further prosecution.

The board introduced document D5, which disclosed the version of the MHP standard mentioned in the description, into the appeal proceedings.

VI. With a reply dated 14 January 2019, the appellant filed amended claims according to a main request and first, second and third auxiliary requests. It submitted

arguments as to why the amended claims met the requirements of Article 84 EPC 1973 and, consequently, why the case should be remitted to the department of first instance.

VII. With its online filing dated 16 January 2019, the appellant withdrew the request for oral proceedings and requested that a decision be taken on the "*file as it currently stands*".

VIII. On 14 February 2019, the board held oral proceedings in the absence of the appellant.

The chairman noted that it appeared from the file that the appellant 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 request or one of the first to third auxiliary requests, all requests filed with the letter dated 14 January 2019, or that the case be remitted to the department of first instance for further examination, and that the appeal fee be reimbursed.

At the end of the oral proceedings, the chairman announced the decision.

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

"An apparatus in a video display system, said video display system being capable of at least one of displaying video programs with advertisements on a plurality of channels or of displaying a recorded video program with advertisements, said video display further being capable of receiving commands from a remote control operated by a viewer through remote control key events, and wherein said apparatus is capable of

preventing a viewer from switching channels or from fast forwarding of said video program during advertisements for preventing skipping thereof, characterized in that said apparatus comprises:

an advertisement controller;

a memory coupled to said advertisement controller;

advertisement control software within said memory;

where said advertisement control software comprises:

a Multimedia Home Platform system and Multimedia Home Platform application manager; and

a first Multimedia Home Platform application,

wherein said advertisement controller is capable of executing said advertisement control software to request exclusive access by the first Multimedia Home Platform application to one or more of said remote control key events using an event manager so that no other application will be able to receive remote control key events, thereby taking exclusive control of one of a channel switching function or a fast forwarding function of said video display system."

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

"An apparatus in a video display system, said video display system being capable of at least one of displaying video programs with advertisements on a plurality of channels or of displaying a recorded video program with advertisements, said video display further

being capable of receiving commands from a remote control operated by a viewer through remote control key events, and wherein said apparatus is capable of preventing a viewer from switching channels or from fast forwarding of said video program during advertisements for preventing skipping thereof, characterized in that said apparatus comprises:

an advertisement controller;

a memory coupled to said advertisement controller;

advertisement control software within said memory,

where said advertisement control software comprises:

a Multimedia Home Platform system and Multimedia Home Platform application manager; and

a first Multimedia Home Platform application,

wherin *[sic]* said advertisement control software comprising *[sic]* a first application arranged for requesting exclusive access by the first Multimedia Home Platform application to one or more remote control key events, and a second application arranged for blocking access of said first application to said one or more remote control key events;

wherein said advertisement controller is capable of executing said advertisement control software to obtain exclusive access by said first application to one or more of said remote control key events using an event manager so that no other application will be able to receive remote control key events, thereby taking exclusive control of one of a channel switching

function or a fast forwarding function of said video display system, and of activating said second application for blocking said access by said first application."

XI. Claim 1 of the second auxiliary request differs from claim 1 of the main request in that the introductory part of the former specifies:

"An apparatus in a video display system, said video display system being capable of displaying video programs with advertisements on a plurality of channels, and of displaying a recorded video program with advertisements, said video display further being capable of receiving commands from a remote control operated by a viewer through remote control key events, and wherein said apparatus is capable of preventing a viewer from switching channels or from fast forwarding of said video program during advertisements for preventing skipping thereof".

XII. Claim 1 of the third auxiliary request differs from claim 1 of the main request in that the introductory part of the former specifies:

"An apparatus in a video display system that is capable of displaying video programs with advertisements on a plurality of channels, and of preventing a viewer of a video program with advertisements from switching from a first channel, wherein said video display system is capable of displaying a recorded video program with advertisements and said apparatus is further capable of preventing a viewer of said recorded video program from fast forwarding said recorded video program to skip past advertisements in said recorded video program, said video display further being capable of receiving

commands from a remote control operated by a viewer through remote control key events".

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

(a) The examining division had failed to substantiate why the prior art disclosed the feature "*exclusive access*". Therefore, the decision was not reasoned within the meaning of Rule 111(2) EPC, and the insufficient reasoning constituted a substantial procedural violation (see statement of grounds of appeal, points 28 and 46). In particular, the effect of enforcing the playing of advertisements had to be distinguished from the particular implementation of granting the advertisement control software exclusive access to remote control events.

(b) The "*Multimedia Home Platform System*", the "*Multimedia Home Platform application manager*" and "*Multimedia Home Platform applications*" defined the framework elements required to perform the claimed functions. It was clear that the "*Multimedia Home Platform application*" requested exclusive access using an event manager. The elements needed to achieve the result were not just in the description but also in the claim (see letter dated 14 January 2019, page 2, last sentence).

(c) Details of the method specified in the description on page 11, lines 3 to 11, were set out in the "*first dependent claims*" after the independent claims. In particular, these claims specified that the first MHP application registered with the event manager to exclusively receive remote control key

events from the remote control. Registering with the event manager was "*the way of achieving the result*" (see letter dated 14 January 2019, page 3, first paragraph).

(d) The section of the referenced MHP standard that dealt with gaining exclusive access disclosed registering with the event manager in order to gain exclusive control. This linked the claims to the standard such that the person skilled in the art could understand the scope of the claims and could implement the claimed subject-matter within the MHP framework (see letter dated 14 January 2019, page 3, first paragraph).

(e) No further details on gaining and releasing exclusive access were needed because the person skilled in the art understood the basic mechanisms specified in the claims and could use these to implement the claimed subject-matter (see letter dated 14 January 2019, page 3, second paragraph).

(f) The claims filed on 14 January 2019 were sufficiently clear to overcome the Article 84 EPC 1973 objection and to allow remittal of the application.

Reasons for the Decision

1. The appeal is admissible.

2. *The alleged substantial procedural violation*

2.1 The obligation to provide adequate reasoning in a decision in accordance with Rule 111(2) EPC is closely

linked to the principle of the right to be heard under Article 113(1) EPC (see T 1340/10, point 1.1).

Pursuant to Rule 111(2) EPC "*[d]ecisions of the European Patent Office which are open to appeal shall be reasoned*".

According to the decision of the Enlarged Board of Appeal R 8/15 (Catchword 1), "*Article 113(1) EPC is infringed if the Board does not address submissions that, in its view, are relevant for the decision in a manner adequate to show that the parties were heard on them, i.e. that the Board substantively considered those submissions. (See Reasons, point 2.2.2.)*". The board considers that this principle also applies to the department of first instance.

The board is of the opinion that Article 113(1) EPC is also contravened if facts and arguments which, from an objective standpoint, are clearly central to the case and could present a challenge to the decision in question were completely disregarded in the decision.

2.2 It is apparent from the marked-up copy of the claim requests filed on 15 January 2013 that the feature of "*exclusive access*", i.e. an advertisement controller capable of executing advertisement control software to obtain exclusive access to one or more remote control key events for taking exclusive control of either a channel switching function or a fast forwarding function, was filed as an amendment in response to the summons issued by the examining division. In the accompanying letter, the appellant extensively argued that the prior art did not disclose "*exclusive access*".

In section 1 of the decision under appeal, the examining division set out to counter the appellant's arguments by referring to passages of D1, D3 and D4 which disclosed taking exclusive control of channel switching or fast forwarding. In this section, the examining division did not address the feature of "*exclusive access*". It ignored the particular implementation specified in claim 1 and instead only considered the functionality of taking exclusive control of channel switching or fast forwarding. Similarly, in the analysis of the disclosures of documents D1, D3 and D4, the examining division referred to passages disclosing taking control of channel switching or fast forwarding, but did not cite any passages disclosing "*exclusive access*".

The board agrees with the appellant that the examining division should have considered this feature in its assessment of novelty and should have addressed the appellant's arguments referring to "*exclusive access*" (see point XIII(a) above).

Moreover, the board considers that this feature was central to the applicant's case.

2.3 Therefore, in line with the principles enunciated in point 2.1 above, the board finds that disregarding the feature of "*exclusive access*" and the corresponding arguments in the assessment of novelty contravenes both Rule 111(2) and Article 113(1) EPC. If the examining division had been of the opinion that the feature highlighted by the applicant was irrelevant to its decision, then it should have explicitly stated this.

Not discussing the feature in the decision under appeal therefore constitutes a violation of the right to be heard under Article 113(1) EPC.

3. *Article 84 EPC 1973 - main request and first to third auxiliary requests*

3.1 According to the established case law of the boards of appeal, Article 84 EPC 1973 has to be interpreted as meaning that a claim must not only be comprehensible from a technical point of view, but must also define all the essential features of the invention. If an independent claim contains a feature defined by a result to be achieved which essentially corresponds to the problem underlying the application, the remaining features of the claim have to comprise all essential features necessary for achieving that result (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, section II.A.3.2).

3.2 Claim 1 of each of the main request and second and third auxiliary requests specifies:

"*wherein said advertisement controller is capable of executing said advertisement control software to request exclusive access by the first Multimedia Home Platform application to one or more of said remote control key events using an event manager so that no other application will be able to receive remote control key events, thereby taking exclusive control of one of a channel switching function or a fast forwarding function of said video display system*".

3.3 Claim 1 of the first auxiliary request specifies:

"*wherein said advertisement controller is capable of executing said advertisement control software to obtain exclusive access by said first application to one or more of said remote control key events using an event manager so that no other application will be able to receive remote control key events, thereby taking exclusive control of one of a channel switching function or a fast forwarding function of said video display system, and of activating said second application for blocking said access by said first application*".

3.4 The features quoted in points 3.2 and 3.3 above define a result to be achieved which essentially corresponds to the problem underlying the present application. The board is not convinced that the claim specifies all features needed to achieve the result (see point XIII(b) above).

3.4.1 The claim essentially specifies that the first MHP application requests "*exclusive access*" to one or more remote control key events using an event manager. If an application gains "*exclusive access*" to events, then events are exclusively sent to the application, i.e. no other application receives the events.

3.4.2 According to the description, page 2, lines 1 to 9, it is a primary object of the invention to prevent a user from switching channels when an advertisement is displayed or from fast forwarding a recorded program to skip an advertisement. In the framework of MHP, preventing the user from switching channel or fast forwarding means that the channel change and fast forward remote control commands are not effective, i.e. the events generated when issuing a channel change or a fast forward command do not initiate a channel change

or a fast forwarding. This implies that the corresponding applications do not have access to the generated events. Thus, the problem underlying the present application may be formulated as how to prevent these applications from gaining access to the generated events.

3.4.3 The first application gaining "*exclusive access*" so that no other application can receive the events also corresponds to the objective technical problem identified by the appellant in the statement of grounds of appeal, point 30.3, i.e. "*how to exercise control over user interaction with the playback device, for preventing a user from controlling the system during advertisements*".

3.4.4 The remaining features of claim 1 do not comprise all the essential features necessary for achieving this result, i.e. for allowing the first application to gain "*exclusive access*" so that no other application can receive the generated events.

3.4.5 The appellant refers to the description, page 11, lines 3 to 11 (see point XIII(c) above). This passage discloses that the org.dvb.event application programming interface (API) provides the first MHP application with a method for registering to receive user events from the remote control and to request exclusive access to certain remote control key events. It is apparent from this passage that prior to requesting exclusive access, the first MHP application must register with the MHP EventManager to receive events.

3.4.6 The board's interpretation of the cited passage is confirmed by the appellant's argument that the claimed

result requires registering with the described event manager (see point XIII(c) above).

3.4.7 As stated by the appellant (see point XIII(d) above), Annex J of document D5 discloses registering with the EventManager. The application can then request exclusive access either with "addExclusiveAccessToAWTEvent(ResourceClient, UserEventRepository)" (see page 343) or "addUserEventListener(UserEventListener, ResourceClient, UserEventRepository)" (see page 344). Page 11 of the description of the current application discloses that exclusive access is requested using the former.

3.4.8 Contrary to the appellant (see point XIII(e) above), the board is of the opinion that both registering with the MHP EventManager and the method used for requesting exclusive access are essential to gain the claimed exclusive access and should have been defined in claim 1.

3.5 In view of the above, the board finds that claim 1 of the main request and the first, second and third auxiliary requests does not meet the requirements of Article 84 EPC 1973.

4. *Request for remittal (Article 111(1) EPC)*

Since the board does not agree with the appellant that the amended claims overcome the objection raised under Article 84 EPC 1973 (see point XIII(f) and section 3 above), this request serves no purpose and therefore needs not be considered by the board.

5. Since none of the appellant's requests is allowable, the appeal is to be dismissed.

6. *Reimbursement of the appeal fee under Rule 103(1)(a) EPC*

6.1 According to Rule 103(1)(a) EPC, the reimbursement of the appeal fee is ordered in the event where the board of appeal deems an appeal allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

6.2 Since the appeal is not allowable, the request for reimbursement of the appeal fee is refused.

Order

For these reasons it is decided that:

1. The appeal is dismissed.

2. The request for reimbursement of the appeal fee is refused.

The Registrar: The Chairman:

K. Boelicke C. Kunzelmann

Decision electronically authenticated