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**Datasheet for the decision
of 21 November 2018**

Case Number: T 1910/13 - 3.5.04

Application Number: 10178971.7

Publication Number: 2290970

IPC: H04N7/15, H04N7/18, G10L19/00,
G10L19/14

Language of the proceedings: EN

Title of invention:

Apparatus, method, and computer program for supporting video conferencing in a communication system

Applicant:

Rockstar Consortium US LP

Headword:

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (no)

Decisions cited:

Catchword:



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Case Number: T 1910/13 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 21 November 2018

Appellant: Rockstar Consortium US LP
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 4 April 2013
refusing European patent application
No. 10178971.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman B. Müller
Members: R. Gerdes
M. Paci

Summary of Facts and Submissions

- I. The appeal is against the decision to refuse European patent application No. 10 178 971.7, published as EP 2 290 970 A1.
- II. The examining division refused the patent application with a decision according to the state of the file referring to the reasons given in communications dated 28 September 2011 and 4 October 2012. In the latter communication the examining division had stated that claim 1 then on file did not comply with Article 123(2) EPC and that its subject-matter lacked inventive step according to Article 56 EPC in view of the combination of documents:

D1: US 5 710 591 A and
D2: WO 02/080147 A1.

- III. The applicant filed notice of appeal against this decision and with its statement of grounds of appeal submitted claims of a new main request and a first auxiliary request. The claims of the auxiliary request correspond to those underlying the decision under appeal. The appellant requested that the decision under appeal be set aside and that a patent be granted based on the claims of the new main request or the auxiliary request.
- IV. Claim 1 of the auxiliary request reads as follows:

"A method for video conferencing, comprising:

receiving through one or more ports a plurality of channels for a communication session, the plurality of channels having at least a first channel having audio

and video information from a first conference participant and at least a second channel having audio and video information from a second conference participant;

identifying a channel of the plurality of channels as a primary speaker channel from at least some of the audio information of the plurality of channels;

identifying a channel of the plurality of channels as a secondary speaker channel;

providing video information from the primary speaker channel to at least one other channel of the communication session; and

providing audio information from both the primary and secondary speaker channels to at least one other channel, comprising:

decompressing the audio information from both the primary and secondary speaker channels;

mixing the decompressed audio information from the primary and secondary speaker channels to generate mixed audio information;

identifying one or more audio CODECs used by the at least one other channel; and

compressing the mixed audio information at least one time, once for each of the one or more identified CODECs; and

providing the mixed audio information to the at least one other channel."

- V. Claim 1 of the main request corresponds to claim 1 of the auxiliary request without the underlined wording.
- VI. The board issued a summons to oral proceedings stating *inter alia* that it considered the subject-matter of claim 1 of all the appellant's requests as lacking inventive step.

The board made the following observations (text in bold typeface added, text ~~struck through~~ deleted):

"Main request

3. *Claim 1 of the main request corresponds essentially to claim 1 of the auxiliary request, except that claim 1 of the main request does not comprise the step of 'decompressing the audio information from both the primary and secondary speaker channels', see also statement of grounds, bottom of page 1.*

*Because the scope of the claims of the main request encompasses that of **the** corresponding claims of the auxiliary request, the observations below regarding inventive step of the subject-matter of the claims of the auxiliary request apply similarly to the claims of the main request.*

Auxiliary request

...

Inventive step, Article 56 EPC 1973

5. *It appears to be common ground that D1 may be considered the closest prior art with respect to the claimed subject-matter.*

5.1 The examining division found that D1 did not disclose the following features (see *European Search Opinion*, point 3.2, which is referenced under point 3 of the communication dated 4 October 2012):

- (a) 'audio processing related to video conferencing wherein a secondary speaker is identified',
- (b) 'the mixed audio from the primary and the secondary speakers is compressed according to a plurality of identified CODECs', and
- (c) 'decompressing compressed audio signals prior to mixing the same' (see communication dated 4 October 2012, point 3.2.2).

5.2 The appellant argued that D1 additionally did not disclose (see statement of grounds, page 2, third paragraph of the chapter 'Article 56 EPC'):

- (d) identifying a secondary speaker channel and
- (e) mixing the audio information from the primary and secondary speakers.

5.3 The board considers feature (d) to paraphrase feature (a). The claim is silent on the basis of which criteria the primary and secondary channels are identified. It is also noted that claim 1 is silent on the time sequence according to which the different steps are performed. It appears that claim 1 does not exclude that the secondary speaker channel may be identified after the primary speaker channel as a new primary speaker channel. Hence, at present the board considers this feature to only relate to a selection of a second channel as a speaker channel.

5.4 The step of mixing of audio information from the primary and secondary speaker channels (feature e) does not seem to exclude that audio signals from further channels are also mixed with these audio signals. Hence, the feature seems to be disclosed in D1, column 2, lines 6 to 8, together with column 3, lines 25 to 31.

5.5 The appellant argued that the distinguishing features had the following technical effects (see statement of grounds, bottom of page 2):

- (i) reducing the need for switching the audio information from primary and secondary speakers, thus reducing computational complexity and
- (ii) efficient reception of the mixed audio by participants using various types of equipment.

At present the board **concurrs that technical effect (ii) may be achieved but** is not convinced that effect (i) is necessarily achieved by the **distinguishing** features of claim 1. Claim 1 does not specify when and how channels are switched. A relationship between the frequency of switching and the identification of channels is not apparent from the claim. Even if the channels having the most active speakers were identified, it appears questionable whether less audio switching is achieved, for example in case three persons participate in a conversation.

5.6 The appellant argued that the invention solved the technical problem of how to provide an improved

video-conferencing method that was capable of efficiently providing audio and video information to a plurality of participants in real-time (see statement of grounds, penultimate paragraph on page 2), whereas the examining division formulated the technical problem as providing for audio originating from at least two conference participants to a plurality of other participants with heterogeneous audio equipment (see European Search Opinion, point 3.3).

5.7 For the reasons given under points 5.3 to 5.5 above, the board tends to accept the technical problem formulated by the examining division.

5.8 The appellant stated that the skilled person would have no reason to turn to D2 in order to solve the technical problem, because 'D1 makes no mention whatsoever of the use of compression techniques' (see statement of grounds, paragraph bridging pages 2 and 3 and first full paragraph on page 3).

At present the board is not convinced by these arguments. Firstly, compression techniques are well known in audio transmission (see D2, section entitled 'Background of the Invention'). Secondly, D2 is in the same field as the present invention ('conference calls', see page 43, lines 6 to 14).

D2 explicitly addresses the problems associated with heterogeneous user equipment (see page 3, lines 10 to 20). It also refers to the conventional solution to 'Completely decode the incoming bits to analog or digital speech samples from the first speech coding standard, and then reencode the analog speech samples using the second speech coding standard', see page 3, lines 29 to 31. In view of this conventional solution

*it appears obvious that the audio information has to be encoded/compressed for each recipient separately if different recipients have different vocoders. Hence, it appears that the skilled person would have arrived at the subject-matter of claim 1 based on D1 if combined with the background art presented in D2 **without inventive effort.***

5.9 *Hence, it appears that the subject-matter of claim 1 lacks an inventive step in view of the combination of D1 and D2."*

- VII. In a letter of reply dated 8 October 2018 the appellant withdrew its request for oral proceedings and requested a decision according to the state of the file.
- VIII. The oral proceedings were subsequently cancelled by the board.

Reasons for the Decision

1. The appeal is admissible.
2. In the communication annexed to the summons to oral proceedings, the board expressed its preliminary opinion that the subject-matter of claim 1 of the auxiliary request (see point VI.5. above) and similarly the main request (see point VI.3. above) lacked inventive step.
3. The appellant neither attempted to rebut the board's provisional opinion, nor submitted any new requests aimed at overcoming the objections. Instead, the appellant requested a decision according to the state of the file. Despite a re-assessment of the case the

board sees no reason to depart from its preliminary opinion, which, as amended above, therefore becomes final.

4. It follows that the decision under appeal cannot be set aside.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

B. Müller

Decision electronically authenticated