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**Datasheet for the decision
of 23 January 2020**

Case Number: T 0358/14 - 3.5.04

Application Number: 00308714.5

Publication Number: 1091575

IPC: H04N5/445

Language of the proceedings: EN

Title of invention:

Improvements relating to an electronic programme guide

Patent Proprietor:

Pace Plc

Opponent:

Interessengemeinschaft für Rundfunkschutzrechte
e.V.

Headword:

Relevant legal provisions:

EPC 1973 Art. 56, 84, 100(a)

Keyword:

Inventive step - main request (no) - first and second auxiliary requests (no)

Claims - clarity - first and second auxiliary requests (no)

Decisions cited:

Catchword:



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Case Number: T 0358/14 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 23 January 2020

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on
12 December 2013 revoking European patent
No. 1091575 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman R. Gerdes
Members: B. Willems
 G. Decker

Summary of Facts and Submissions

- I. The appeal is against the decision of the opposition division revoking the European patent No. EP 1 091 575.
- II. Notice of opposition to the patent had been filed by Interessengemeinschaft für Rundfunkschutzrechte e.V. The opposition was based on the grounds of Article 100(a) EPC.
- III. The documents cited in the decision under appeal included the following:
- D3: EP 0 774 866 A2;
- D4: WO 97/18670 A1;
- D9: US 5,585,838 A.
- IV. The opposition division revoked the patent according to Articles 101(2) and 101(3)(b) EPC for the following reasons.
- The subject-matter of granted claim 1 lacked inventive step over the combined disclosures of documents D9 and D3 (Article 100(a) EPC).
 - Claim 1 of the first auxiliary request did not meet the requirements of Article 84 EPC.

The second auxiliary request was not admitted into the proceedings under Article 114(2) and Rule 116(1) EPC because the suggested amendments did not *prima facie* lead to an allowable set of claims.

- V. The patent proprietor filed notice of appeal. With the statement of grounds of appeal, the appellant submitted claims according to a first and a second auxiliary request. It requested that the opposition division's decision be set aside and that the opposition be rejected or, alternatively, that the patent be maintained in amended form on the basis of the first or second auxiliary request. The appellant provided arguments as to why the subject-matter of granted claim 1 and claim 1 of the first and second auxiliary requests was novel and inventive (Articles 100(a), 54 and 56 EPC) and indicated a basis in the application as filed for the amendments made to claim 1 of the first and second auxiliary requests (Article 123(2) EPC).
- VI. The respondent (opponent) filed a reply to the appeal requesting that it be dismissed. It provided reasons as to why it did not concur with the opposition division's conclusion that the claimed subject-matter was novel over the disclosures of D3, D4 or D9, referred to the assessment set out in point 2.2.2 of the appealed decision that the subject-matter of granted claim 1 lacked inventive step and rebutted the appellant's arguments set out in the statement of grounds of appeal. It submitted arguments as to why claim 1 of the first and second auxiliary requests did not meet the requirements of Articles 84, 54 and 56 EPC.
- VII. In a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal, OJ EPO 2007, 536), annexed to the summons to oral proceedings, the board set out its interpretation of claim 1 of the granted patent and expressed the following provisional opinion.

- (a) The subject-matter of granted claim 1 is new over each of the disclosures of D3, D4 and D9.
- (b) The subject-matter of granted claim 1 lacks inventive step over the combined disclosures of D9 and D3 and the common general knowledge of the person skilled in the art (Article 100(a) EPC 1973).
- (c) Claim 1 of the first and second auxiliary requests is not clear (Article 84 EPC 1973) because it is ambiguous whether the indication means displayed adjacent to the selected portion contains text or not.
- (d) The subject-matter of claim 1 of the first and second auxiliary requests lacks inventive step over the combined disclosures of D9 and D3 and the common general knowledge of the person skilled in the art (Article 56 EPC 1973).

VIII. In response to the board's communication, the appellant informed the board that it would not be attending the oral proceedings and that no further submissions would be made.

IX. The respondent did not reply to the board's communication.

X. On 23 January 2020 oral proceedings before the board were held in the absence of both parties.

The chairman noted that it appeared from the file that the appellant had requested that the opposition division's decision be set aside and that the opposition be rejected or, alternatively, that the

patent be maintained in amended form on the basis of the first or second auxiliary request filed with the statement of grounds of appeal.

The chairman noted that it appeared from the file that the respondent had requested that the appeal be dismissed.

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

XI. Claim 1 of the granted patent reads as follows:

"An electronic programme guide display generated on a display screen (102) from broadcast data received from a remote source by a receiver (103) connected to the display screen,
said display comprising a series of portions, each representative of a selectable television programme, at least one of the portions displayed being selectable by a user provided with selection means and viewing the display, and
in response to the selection, an indication means is generated by the broadcast data receiver which is representative of the subject matter of the programme of the selected portion to the user,
characterised in that the indication means is in the form of at least one non-text symbol (18; 20) generated on screen in response to the user selection adjacent to the position of the portion selected."

XII. Claim 1 of the first auxiliary request differs from claim 1 of the granted patent in that the characterising portion of the claim reads:

"the indication means is only in the form of at least one non-text symbol (18; 20), said non-text symbol generated on screen in response to the user selection adjacent to the position of the portion selected".

XIII. Claim 1 of the second auxiliary request differs from claim 1 of the granted patent in that the characterising portion of the claim reads:

"the indication means is in the form of a single non-text symbol (18; 20), generated on screen in response to the user selection adjacent to the position of the portion selected".

XIV. The opposition division's arguments, where relevant to the present decision, may be summarised as follows.

(a) The term "*adjacent*" meant that the symbol was generated next to the selected portion and that the position of the symbol varied according to the position of the selected portion (see decision under appeal, page 6, penultimate paragraph).

(b) D9 was the closest prior art for the assessment of inventive step (see decision under appeal, point 2.2.2.1).

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

(a) D9 distinguished between icons (symbols) and still images (see statement of grounds of appeal, point 5).

(b) The subject-matter of granted claim 1 differed from the disclosure of D9 in that the indication means

were in the form of a non-text symbol and displayed adjacent to the selected portion (see point 8 of the statement of grounds of appeal).

- (c) The person skilled in the art combining the teachings of D9 and D3 would understand that the position of the indication means could be moved. However, there was no teaching on how the space for displaying the information could be reduced (see statement of grounds of appeal, points 9 and 10).
- (d) The objective technical problem was how to improve the efficiency of additional programme information supplied upon selection of a programme from an EPG (see statement of grounds of appeal, point 7).
- (e) The subject-matter of claim 1 of the first and second auxiliary requests differed from the disclosure of D9 in that the entire summary panel was replaced by a single symbol (see statement of grounds of appeal, points 14 and 17).

XVI. The respondent's arguments, where relevant to the present decision, may be summarised as follows.

- (a) A still image could be equated with a symbol representative of the subject-matter of the programme (see the reply to the appeal, page 6, third paragraph).
- (b) Granted claim 1 did not specify any features relating to the size of the non-text symbol and the term "*symbol*" did not imply any size constraints (see reply to the appeal, page 7, first paragraph).

(c) D9, column 10, lines 27 to 41, disclosed that icons were displayed to indicate characteristics of the programme (see reply to the appeal, page 7, third paragraph).

(d) It was not apparent from claim 1 of the first and second auxiliary requests whether, apart from one or more non-text symbols, text was displayed (see the reply to the appeal, points 3.1.1 and 4.1.1).

Reasons for the Decision

1. The appeal is admissible.
2. *Interpretation of claims*
 - 2.1 Granted claim 1 specifies that the "*at least one non-text symbol (18; 20) [is] generated on screen in response to the user selection adjacent to the position of the portion selected*".
 - 2.2 The board agrees with the opposition division that the term "*adjacent*" means that the symbol is generated next to the selected portion and the position of the symbol varies with the position of the selected portion. This interpretation of "*adjacent*" is supported by the different positions of the symbols shown in figures 2 and 3 (see point XIV(a) above).
3. *Granted claim 1 - inventive step over the combined disclosures of D9 and D3 (Article 100(a) EPC 1973)*
 - 3.1 The opposition division identified D9 as the closest prior art for the assessment of inventive step (see

point XIV(b) above). The appellant did not contest this. The board agrees with this assessment.

- 3.2 Document D9 discloses an electronic programme guide display generated on a display screen (see figure 3) from broadcast data received from a remote source by a receiver connected to the display screen (see figure 2 and column 8, lines 26 to 31: "*In generating the program time guide, the interactive station controller 18 can receive input from the input device 22, can obtain information from the head end 12, and can utilize information stored in the memory system 60 at the interactive station controller*"). The display comprises a series of portions, each representative of a selectable television programme (see figure 3), at least one of the portions displayed being selectable by a user provided with selection means and viewing the display (see figure 3, reference numeral 102 and column 10, lines 57 to 59: "*The focus frame 102, in conjunction with a navigation key 74 on the input device, allows a user to navigate through the program grid 80*"). In response to the selection, an indication means in the form of a still image representative of the subject-matter of the programme of the selected portion is generated (see column 10, lines 22 to 32 and lines 47 to 56: "*the program identified by the focus frame 102 is the subject of the program summary panel 108 [... which may] contain one or more informational icons (not shown) which indicate characteristics of the program*" and "*the preview window might display a video clip or still image for the program, or the logo for the channel on which the program is available [...]* video clips or still images may be obtained from the continuous media servers 32").

The programme guide data contains a link to the data stored on the media servers (see column 6, lines 7 to 17).

3.3 The board agrees with the appellant that D9 distinguishes between icons (symbols) and still images (see point XV(a) above). The board is not persuaded that a still image can be equated with a symbol representative of the subject-matter of the programme (see point XVI(a) above). Hence D9 does not disclose a non-text symbol which is representative of the subject-matter of the programme.

3.4 Thus, the subject-matter of granted claim 1 differs from the disclosure of D9 in that (see also point XV(b) above):

(a) the indication means are displayed adjacent to the selected portion; and

(b) the indication means are in the form of a non-text symbol representing the subject-matter of the programme.

3.5 These features do not mutually influence each other to achieve a technical success over and above the sum of their respective technical effects. Hence, it need to be established whether each of these features is inventive in the light of the prior art (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition, 2016, I.D.9.2.2).

3.6 The panel shown in figure 1 of D3 is adjacent to the selected portion. The appellant did not contest that the person skilled in the art would derive from the combination of the disclosures of D9 and D3 that the

position of the indication means can be moved (see point XV(c) above).

According to the board, the person skilled in the art would consider moving, in the programme guide known from D9, the preview window with the still picture from the summary panel to a position adjacent to the selected portion, this different position being a plain alternative to a position on the right side of the display as in D9, see also column 10, lines 39 to 41.

- 3.7 The board is not convinced that the "*non-text symbol*" specified in claim 1 takes up less of the display screen than a still picture (see point XV(c) above). The board agrees with the respondent (see point XVI(b) above) that granted claim 1 does not specify any features relating to the size of the non-text symbol and the term "*symbol*" does not imply any size constraints.

Therefore, the board is not persuaded that the feature mentioned under point 3.4(b) above improves the efficiency of additional programme information supplied upon selection of a programme from an EPG (see point XV(d) above). Rather, this feature aims at providing an alternative non-text representation of the subject-matter of the programme.

As set out by the respondent, D9, column 10, lines 27 to 41, discloses that icons are displayed to indicate characteristics of the programme (see point XVI(c) above). It would be obvious to the person skilled in the art to characterise also the content by an icon, i.e. to store and display icons representative of the content, rather than or in addition to still images representative of the content.

3.8 In view of the above, the subject-matter of claim 1 of the granted patent lacks inventive step over the combined disclosures of D9 and D3 and the common general knowledge of the person skilled in the art (Article 100(a) EPC 1973).

4. *First and second auxiliary requests - clarity*
(Article 84 EPC 1973)

4.1 Claim 1 of the first auxiliary request specifies that "*the indication means is only in the form of at least one non-text symbol (18; 20), said non-text symbol generated on screen in response to the user selection adjacent to the position of the portion selected*".

Claim 1 of the second auxiliary request specifies that "*the indication means is in the form of a single non-text symbol (18; 20), generated on screen in response to the user selection adjacent to the position of the portion selected*".

Claim 6 of either request specifies that "*upon a portion being selected, the indication means displayed includes the full title of the programme represented in the portion*".

4.2 According to the wording of claim 1 quoted in point 4.1 above no text is displayed adjacent to the selected portion in addition to the symbol.

This interpretation of claim 1 is not contradicted by claims 10 to 16 which refer to indication means in an additional area, i.e. additional indication means.

However, claim 6 contradicts an interpretation according to which no text is displayed. Claim 6 refers

to "*the indication means*" displayed adjacent to the selected portion. Thus, claim 6 specifies that the indication means displayed adjacent to the selected portion includes the full title, i.e. text.

4.3 Therefore, the board agrees with the respondent that it is ambiguous whether the indication means displayed adjacent to the selected portion contains text or not (see point XVI(d) above).

4.4 In view of the above, claim 1 of the first and second auxiliary requests does not meet the requirements of Article 84 EPC 1973.

5. *Claim 1 of the first and second auxiliary requests - inventive step (Article 56 EPC 1973)*

5.1 Claim 1 of the first and second auxiliary requests specifies that the non-text symbol is displayed adjacent to the selected portion. Claims 10 to 16 of these requests specify that text is displayed in an additional area. Thus, according to the claims of the first and second auxiliary requests, the non-text symbol is displayed adjacent to the selected portion and text is displayed in an additional window.

5.2 The board is not convinced by the appellant's argument that the subject-matter of claim 1 of the first and second auxiliary requests differs from the disclosure of D9 in that the entire summary panel is replaced by a single symbol and hence a greater majority of the EPG display is still available to be viewed (see point XV(e) above). Rather, the person skilled in the art would replace the still image with a symbol. As set out in point 3.7 above, the "*non-text symbol*" does not

necessarily take up less of the display screen than a still picture.

5.3 Therefore, the reasoning set out in section 3 above applies equally to claim 1 of the first and second auxiliary requests.

5.4 In view of the above, the subject-matter of claim 1 of the first and second auxiliary requests lacks inventive step over the combined disclosures of D9 and D3 and the common general knowledge of the person skilled in the art (Article 56 EPC 1973).

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

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

R. Gerdes

Decision electronically authenticated