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Datasheet for the decision
of 8 May 2018

Case Number:	T 1166/14 - 3.5.07
Application Number:	03256058.3
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Language of the proceedings:	EN

Title of invention:
Navigating media content via groups within a playlist

Applicants:
1) Microsoft Technology Licensing, LLC
2) Panasonic Corporation

Headword:
Navigating media content/MICROSOFT TECHNOLOGY LICENSING ET AL.

Relevant legal provisions:
EPC Art. 56
RPBA Art. 13(1), 13(3)

Keyword:
Inventive step - main and first auxiliary requests (no)
Late-filed request - second and third auxiliary requests - admission (no)

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Case Number: T 1166/14 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 8 May 2018

Appellant: Microsoft Technology Licensing, LLC
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Appellant: Panasonic Corporation
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Decision under appeal: Decision of the Examining Division of the
                          European Patent Office posted on 6 December 2013
                          refusing European patent application No.
                          03256058.3 pursuant to Article 97(2) EPC

Composition of the Board:

Chairman   R. Moufang
Members: R. de Man
                  M. Jaedicke

Summary of Facts and Submissions

I.   The applicants (appellants), which at the time were
        Microsoft Corporation and Panasonic Corporation,
        appealed against the decision of the Examining Division
        refusing European patent application No. 03256058.3,
        which claimed an earliest priority date of 16 October
        2002.

II.   With effect from 31 March 2015, the EPO registered the
        transfer of Microsoft Corporation's rights in the
        application to Microsoft Technology Licensing, LLC,
        which thereby became co-appellant.

III.   The decision under appeal cited the following
        documents:

        D1: US 2002/147728 A1, published on 10 October 2002;
        D2: US 2002/093886 A1, published on 18 July 2002; and
        D3: EP 0 757 350 A2, published on 5 February 1997.

        The Examining Division decided that the subject-matter
        of claims 1, 8, 11, 13 and 15 infringed Article 123(2)
        EPC, that claims 1, 8 and 13 were not clear within the
        meaning of Article 84 EPC and that the subject-matter
        of claims 1, 8 and 13 lacked inventive step within the
        meaning of Article 56 EPC over document D3 in
        combination with common general knowledge as
        exemplified by documents D1 and D2.

IV.   With their statement of grounds of appeal, the
        appellants filed a sole main request replacing their
        previously pending claims.

V.   In a communication accompanying a summons to oral
        proceedings, the Board expressed the preliminary

opinion that the main request did not comply with Articles 84 and 123(2) EPC and that the subject-matter of claim 1 lacked inventive step in view of document D3.

VI.   In preparation for the oral proceedings, the appellants filed a first auxiliary request by letter of 6 April 2018 and second and third auxiliary requests by letter of 2 May 2018.

VII.   Oral proceedings were held on 8 May 2018. At the end of the oral proceedings, the chairman pronounced the Board's decision.

VIII.   The appellants requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request or, in the alternative, on the basis of the claims of one of the first to third auxiliary requests.

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

"A method of grouping media files within a playlist to create playlist groups, said method comprising:
        selecting (408) one or more input media files within said playlist according to a grouping criterion to define a first playlist group (PLAYLIST GROUP #1 804) from the input media files, said first playlist group comprising references to each of the media files selected for the first playlist group;
        selecting (408) one or more input media files within said playlist according to the grouping criterion to define a second playlist group (PLAYLIST GROUP #2 804) from the input media files, said second playlist group comprising references to each of the media files selected for the second playlist group;

generating (410) a group header (806) associated with each of the first and second playlist groups, each of said group headers comprising a value identifying the respective first or second playlist group and a reference to the other of the first or second playlist groups, wherein the reference to the other of the first or second playlist groups enables navigation between the first playlist group and the second playlist group; and

storing (412), on a computer-readable medium, the generated group header and the references to each of the selected input media files associated with the first playlist group in a first data structure and the generated group header and the references to each of the selected input media files associated with the second playlist group in a second data structure, and the selected input media files associated with the first and second playlist groups."

X.   Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the wording "grouping media files within a playlist to create playlist groups" has been replaced with "grouping media files to create playlist groups within a playlist" and in that the words "within said playlist" have been deleted from both occurrences of "selecting (408) one or more input media files within said playlist".

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

"A method of grouping media files to create groups within a playlist, said method comprising:
        selecting (408) one or more input media files, from a hierarchical menu structure, according to a grouping criterion to define a first group (PLAYLIST

GROUP #1 804) of the input media files, said first
group comprising references to each of the media files
selected for the first group;

selecting (408) one or more input media files,
from a hierarchical menu structure according, [sic] to
the grouping criterion to define a second group
(PLAYLIST GROUP #2 804) of the input media files, said
second group comprising references to each of the media
files selected for the second group;

generating (410) a group header (806) associated
with each of the first and second groups, each of said
group headers comprising a value identifying the
respective first or second group and a reference to the
other of the first or second groups, wherein the
reference to the other of the first or second groups
enables navigation between the first group and the
second group; and

storing (412), on a computer-readable medium, the
generated group header and the references to each of
the selected input media files associated with the
first group in a first data structure and the generated
group header and the references to each of the selected
input media files associated with the second group in a
second data structure, and the selected input media
files associated with the first and second groups;

wherein the playlist is a flat list comprising the
first group and the second group."

XII.   Claim 1 of the third auxiliary request differs from
        claim 1 of the second auxiliary request in that both
        "from a hierarchical menu structure, according" and
        "from a hierarchical menu structure according," have
        been replaced with "from a hierarchical menu structure
        comprising two or more layers of directories,
   according".

XIII.   The appellants' arguments where relevant to this
         decision are discussed in detail below.

Reasons for the Decision

1.   The appeal complies with the provisions referred to in
         Rule 101 EPC and is therefore admissible.

2.   *The application*

2.1   The application relates to navigating digital media
         content. The background section of the application
         explains that media files are typically organised into
         playlists. For example, audio media files may be
         organised in separate playlists by album, artist, genre
         or date. On a personal computer, the user can use menus
         and graphical displays to easily navigate through this
         organisation. This is said not to be possible when the
         media files are copied to a writable CD or DVD and
         rendered in a portable CD or DVD player or another
         consumer electronic device. Due to having limited user-
         input capabilities, such devices support only a flat
         forward/backward navigation metaphor through each of
         the directories that store the media files.

2.2   According to paragraph [0032] of the application as
         filed, the invention includes "authoring software" and
         "playback software". The authoring software selects
         media files "according to a grouping criterion" to
         define groups of media files, generates "group header"
         data structures and stores the selected media files,
         the defined groups and their group headers on a
         computer-readable medium. The playback software then
         allows the user to navigate and select media files via
         "groups within a playlist".

2.3   Paragraph [0039] of the application states that
        "[u]nlike presently available playlists, which are
        simple flat lists of media files, the playlists of the
        invention include one or more groups (e.g., album,
        artist, genre, or date) that allow the user to use a
        simple navigation metaphor such as 'Next' and
        'Previous' to navigate to the desired group within the
        playlist". Such a playlist according to the invention
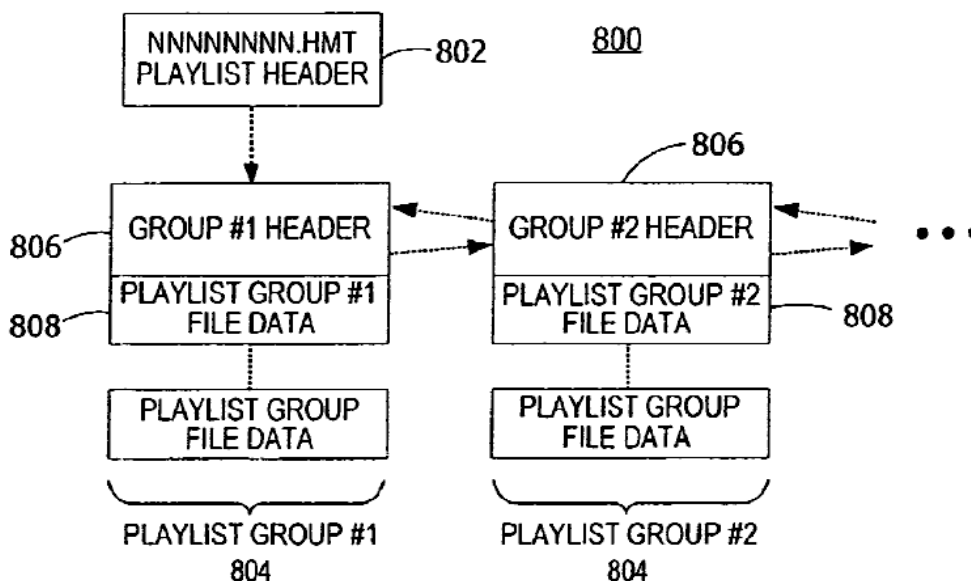   is shown in Figure 3:

FIG. 3
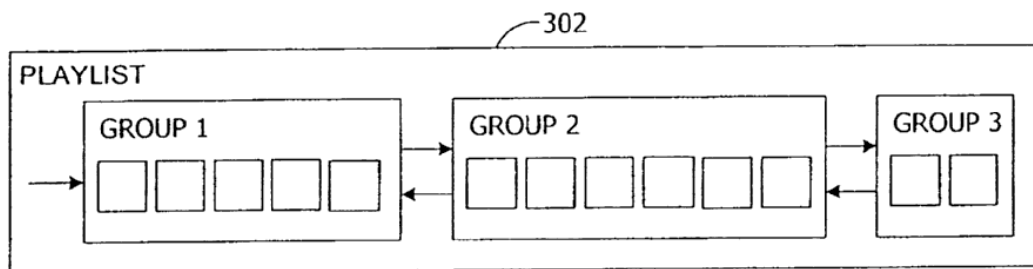
2.4   A data structure for representing "a group within a
        playlist" is described starting from paragraph [0066].
        It is illustrated in Figure 8:

FIG. 8

Each group consists of a group header and a series of "playlist group file data" items. Each group header contains a "Group Number" identifier and "Offset of next Group" and "Offset of previous Group" references (see Table 2 in paragraph [0068]). Each "playlist group file data" item has a format that depends on the type of data stored in the playlist (such as "Audio", "Video", "Timed Image" and "Parallel Image Audio"; see Table 4 in paragraph [0071]) and includes, in particular, references to the actual media data, for example in the form of an audio file ID and start and end data identifying the portion of the audio file to be played (see paragraph [0074]).

2.5   A playlist according to the invention is thus not a simple, purely linear list of files but a list of "groups" or "playlist groups", each group specifying a list of files. The header data structure of each group includes references to the next group and the previous group, which can be used by a playback device to

implement "next playlist group" and "previous playlist group" functionality.

Main request

3.   *Claim interpretation*

3.1   Claim 1 of the main request is directed to a "method of grouping media files within a playlist to create playlist groups". It specifies a step of "selecting one or more input media files within said playlist according to a grouping criterion to define a first playlist group from the input media files" and a similar selection step to define a second playlist group according to the same grouping criterion.

3.2   At the oral proceedings, the appellant confirmed that the claim included two selection steps to indicate that at least two groups were created on the basis of the same grouping criterion. For example, if the grouping criterion is "All songs by artist", the first group includes the songs by a first artist and the second group the songs by a second artist (see e.g. paragraph [0053] of the description).

3.3   Since these features refer to media files "within" a playlist, claim 1 could be understood as defining a method that starts with an existing playlist of media files and "groups" the files within that playlist. In its communication, the Board expressed doubt that the application supported this interpretation, and it therefore suggested that the features "grouping media files within a playlist" and "selecting ... files within said playlist" rendered claim 1 unclear.

3.4   In response to the Board's communication, the
        appellants filed the first auxiliary request. Claim 1
        of that request is directed to a "method of grouping
        media files to create playlist groups within a
        playlist" and no longer states that the input media
        files are selected "within said playlist". The claim
        therefore reflects the invention as described in the
        application (see point 2.2 above).

3.5   At the oral proceedings before the Board, the
        appellants confirmed that claim 1 of the main request
        should be understood in the same way. Accordingly, the
        Board proceeds with the assessment of inventive step.

4.   *Inventive step - Article 56 EPC*

4.1   Document D3 relates to an information recording medium
        storing media items and reproduction-control
        information in the form of lists of various types (see
        abstract and page 3, line 44, to page 4, line 12).

        One type of list is the "play list". Table 7 on page 9
        shows a playlist data structure. It includes references
        to the media items selected for the playlist (page 9,
        line 59, to page 10, line 1; play item #n offsets), a
        header comprising a value identifying the playlist
        (page 9, lines 36 to 40; list ID number IDN) and
        references to a previous list and a next list (page 9,
        lines 45 to 48; previous list offset PLO and next list
        offset NLO).

        Figure 12 shows a number of lists including a first
        playlist PL4 and a second playlist PL5. Playlist PL4
        includes a "next list" reference to PL5, and playlist
        PL5 includes a "previous list" reference to PL4.

The description on page 20, lines 27 to 38, explains
that the "next list" reference allows the user to
navigate from playlist PL4 to playlist PL5 by means of
the "next" key. Likewise, the "previous list" reference
allows the user to navigate from playlist PL5 to
playlist PL4 by means of the "previous" key.

4.2   Hence, the playlists of document D3 correspond to the
        "playlist groups" of claim 1: each playlist includes a
        list of references to media files and a header, the
        header comprising an identifying value and references
        to other playlists to enable navigation between
        playlists.

        The two playlists PL4 and PL5 shown in Figure 12 taken
        together form a list consisting of first and second
        "playlist groups" and therefore form a "playlist" in
        the sense of the present application (see points 2.3
        to 2.5 above).

        It follows that document D3 anticipates the structure
        of the data stored on the computer-readable medium by
        the method of claim 1.

4.3   The remaining features of claim 1 define steps of
        selecting the media files to be included in the first
        and second playlist groups "according to a grouping
        criterion", of generating the group header data
        structures and of storing the data on the computer-
        readable medium.

        Although document D3 does not specifically disclose
        such steps, it is obvious that to produce the computer-
        readable medium described in D3, the media files to be
        included in playlists PL4 and PL5 have to be selected,
        the relevant data structures have to be generated and

the playlist data structures and selected media files
have to be stored on the computer-readable medium. It
is also obvious (if at all technical) to base the two
selections on a "grouping criterion", for example to
form a first group of songs by a first artist and a
second group of songs by a second artist (see point 3.2
above). Indeed, grouping criteria such as grouping by
artist, genre and album, which are mentioned in the
description, are known from documents D1 and D2 (see
D1, Figures 1 and 4 and paragraphs [0041] to [0050];
D2, paragraphs [0188] to [0190]).

4.4   In their statement of grounds of appeal, the appellants
        did not specifically address the disclosure of
        playlists PL4 and PL5 in Figure 12 of document D3.
        Their arguments in support of inventive step were based
        on an interpretation of "within a playlist" as "within
        an existing playlist", which they have now admitted not
        to have been the correct interpretation in the light of
        the application as a whole (see points 3.3 to 3.5
        above).

4.5   At the oral proceedings, the appellants pointed out
        that playlists PL4 and PL5 in Figure 12 of document D3
        were part of a hierarchy that included menu data
        structures. In addition, both playlists included
        "cancel list offset" references allowing the playback
        device to implement playback-cancellation
        functionality.

        The Board agrees with the appellants that document D3
        discloses features not present in claim 1, but the
        claim does not contain negative limitations ruling out
        their presence.

4.6   The Board therefore concludes that the subject-matter
        of claim 1 lacks inventive step (Article 56 EPC).

First auxiliary request

5.   The first auxiliary request was filed after the Board
        had arranged oral proceedings. Its admission is thus at
        the Board's discretion under Article 13(1) and (3)
        RPBA. Since, as explained above, the request adequately
        addresses some of the concerns expressed in its
        communication, the Board admits the request into the
        proceedings.

6.   However, since claim 1 of the first auxiliary request
        contains no further limitation compared with claim 1 of
        the main request, its subject-matter likewise lacks
        inventive step (Article 56 EPC).

Second and third auxiliary requests

7.   *Admission – Article 13(1) and (3) RPBA*

7.1   The second and third auxiliary requests were filed
        shortly before the oral proceedings. Their admission
        into the proceedings is therefore again at the Board's
        discretion (Article 13(1) and (3) RPBA).

7.2   Compared with claim 1 of the main and first auxiliary
        requests, claim 1 of the second auxiliary request adds
        features specifying that input media files are selected
        "from a hierarchical menu structure" and that the
        playlist is "a flat list comprising the first group and
        the second group".

7.3   *The "flat list" feature*

7.3.1   According to the appellants, the feature "wherein the
         playlist is a flat list comprising the first group and
         the second group" finds a basis in paragraphs [0007],
         [0038] and [0039] of the description.

7.3.2   Paragraphs [0007] and [0039] both explain that <u>unlike</u>
         known playlists, which are "simple flat lists of media
         files", the playlists of the invention include one or
         more groups that allow the user to navigate between
         groups using a simple "next" and "previous" navigation
         metaphor. Paragraph [0038] states that "[e]ach playlist
         includes a flat list of media files", but it describes
         playlists known from "presently available systems" as
         shown in Figures 2A and 2B (see paragraphs [0015] and
         [0016]).

7.3.3   The feature added to claim 1 states, on the one hand,
         that the playlist is a "flat list" and, on the other
         hand, that the list comprises the first and second
         (playlist) groups.

         If "flat list" is understood - in line with the
         description - to refer to a "flat list of media files",
         then this is in direct contradiction with the
         requirement that the list comprises the first and
         second groups.

         If "flat list" is understood to refer to a "flat" list
         of groups, in the sense that the groups are organised
         in a linear list with no further structure, then the
         amendment cannot be based on the "flat list of media
         files" phrases in paragraphs [0007], [0038] and [0039],
         and it would need to be investigated whether the

application as filed discloses such a "flat list of
groups" restriction.

7.3.4   Hence, the feature "wherein the playlist is a flat list
comprising the first group and the second group" is
ambiguous as it stands and thus unclear within the
meaning of Article 84 EPC, and whether a clarification
could be based on the application as filed would need
further investigation.

7.4   *The "hierarchical menu structure" features*

7.4.1   For a basis for the "hierarchical menu structure"
amendments, the appellants referred to paragraphs
[0038] and [0050] to [0055] and to Figures 2A and 7.

7.4.2   As noted above, paragraph [0038] and Figure 2A describe
"presently available systems" rather than the
invention. In these systems, playlists of the known
type (i.e. flat lists of media files) may be organised
in a "hierarchical data structure" as shown in
Figure 2A. This passage does not disclose a step of
selecting media files from this hierarchical data
structure (let alone a "hierarchical menu structure")
to define a "group" of media files.

7.4.3   Paragraphs [0050] to [0055] describe how the authoring
software of the invention creates playlists and
organises them in a hierarchical structure. In the
Board's understanding, paragraphs [0052] and [0053] use
the term "hierarchical menu structure" to refer to the
display of this hierarchical structure in a graphical
user interface such as the "CD Writing Wizard" shown in
Figure 7 and described in more detail in paragraphs
[0059] to [0064].

7.4.4   As the Board noted at the oral proceedings,
        conventional file systems normally include a hierarchy
        of directories, and allowing the user to select files
        from a graphical representation of such a hierarchical
        structure is well known. If the feature "selecting one
        or more input media files from a hierarchical menu
        structure" is to be interpreted as encompassing such a
        conventional selection of files, this amendment is
        prima facie not suitable to overcome the inventive-step
        objection raised against the main and first auxiliary
        requests.

7.4.5   In response, the appellants pointed out that the claim
        required the media files to be selected from the
        hierarchical menu structure "according to a grouping
        criterion" and that the same grouping criterion was to
        be used in both selection steps.

        Claim 1 does not explain in what way the input media
        files are selected "according to a grouping criterion".
        Conceivably, this feature could refer to the mental
        decision of the user to carry out the selection of two
        groups of media files according to a particular
        criterion. But if an attempt is made to relate the
        feature to Figure 7 and its description, the following
        picture emerges. According to paragraphs [0050] to
        [0055], the authoring software creates media files and
        organises them into menus and submenus on the basis of
        criteria such as "All songs by artist" and "All songs
        by genre". The user may then select the menus and
        submenus to be included on the computer-readable medium
        (see paragraph [0059]), thereby effectively selecting
        one or more playlists of groups, the media files in one
        playlist being grouped according to a grouping
        criterion. The wording of claim 1, however, is not
        consistent with this picture: it requires the user to

select files to define a first group and files to define a second group.

7.4.6   Hence, this amendment, too, raises questions under Articles 84 and 123(2) EPC, and it needs further modification to properly reflect the appellants' intention.

7.5   Claim 1 of the third auxiliary request includes the amendments made to claim 1 of the second auxiliary request and adds a feature specifying that the hierarchical menu structure comprises "two or more layers of directories". The appellants argued that this feature found a basis in paragraphs [0050] and [0051] of the application as filed.

However, the directories referred to in paragraphs [0050] and [0051] are directories of a hierarchical file system in which media files are stored. This hierarchy of directories does not correspond to the "hierarchical menu structure" described in paragraphs [0050] to [0055] and shown in Figure 7.

7.6   Since claim 1 of the second and third auxiliary requests is *prima facie* unclear and raises new issues, the Board decides to exercise its discretion under Article 13(1) and (3) RPBA and not admit these late-filed requests into the proceedings.

8.   *Conclusion*

Since none of the appellants' requests can be allowed, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

I. Aperribay   R. Moufang

Decision electronically authenticated