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**Datasheet for the decision  
of 28 January 2020**

**Case Number:** T 1803/14 - 3.5.04

**Application Number:** 08794515.0

**Publication Number:** 2301242

**IPC:** H04N5/268

**Language of the proceedings:** EN

**Title of invention:**

MULTI-PREVIEW CAPABILITY FOR VIDEO PRODUCTION DEVICE

**Applicant:**

GVBB Holdings S.A.R.L

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2)  
RPBA 2020 Art. 11

**Keyword:**

Amendments - added subject-matter (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1803/14 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 28 January 2020**

**Appellant:** GVBB Holdings S.A.R.L.  
(Applicant) 412F, route d'Esch  
2086 Luxembourg (LU)

**Representative:** Hill, Justin John  
Dentons UKMEA LLP  
One Fleet Place  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 2 April 2014  
refusing European patent application No.  
08794515.0 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** C. Kunzelmann  
**Members:** A. Seeger  
B. Müller

## **Summary of Facts and Submissions**

- I. The appeal is against the decision to refuse European patent application No. 08 794 515.0, published as international application WO 2010/008361 A1.
  
- II. The documents cited in the decision under appeal included the following:  
  
D4: "The switcher redefined", 30 April 2007, XP 55042600, retrieved from the Internet:  
URL: [http://www.creativevideo.co.uk/pdf/broadcast\\_pix\\_slate\\_brochure.pdf](http://www.creativevideo.co.uk/pdf/broadcast_pix_slate_brochure.pdf)
  
- III. The application was refused on the ground that claims 1 and 8 of the then main request and the then auxiliary request did not meet the requirements of Article 123(2) EPC, and on the ground that the subject-matter of claims 1 and 8 of the then main request and the then auxiliary request lacked an inventive step over the disclosure of document D4 combined with common general knowledge (Article 56 EPC).
  
- IV. The applicant filed notice of appeal. With the statement of grounds of appeal, the appellant filed claims according to a first auxiliary request and a second auxiliary request. The appellant also submitted a copy of the claims of the main request, which were identical to the claims of the main request on which the decision under appeal was based.
  
- V. The board issued a summons to oral proceedings. In a communication under Article 15(1) RPBA annexed to the summons the board gave its provisional opinion that:

- (a) claim 6 of the main request did not meet the requirements of Article 123(2) EPC,
- (b) the subject-matter of claim 1 of the main request lacked an inventive step (Article 56 EPC),
- (c) claim 1 of both the first and second auxiliary requests fulfilled neither the requirements of Article 84 EPC nor the requirements of Article 123(2) EPC.

- VI. The appellant replied with a letter dated 2 January 2020 and requested that the case be remitted to the department of first instance. In addition, the appellant submitted amended claims according to a main request and first and second auxiliary requests. The appellant asked for feedback on the submitted requests in advance of the oral proceedings.
- VII. In a communication dated 20 January 2020 the board indicated that in view of the submitted requests it considered the oral proceedings to be necessary. The board indicated two issues the appellant should be prepared to discuss during the oral proceedings in addition to the objections discussed in the board's communication annexed to the summons. The second of these issues related to the first and second auxiliary requests and the specific basis in the application as filed for the features "*for routing to an external display*" and "*to route the single composite output video signal to an external display*" in claim 1 of those requests, respectively.
- VIII. By a letter dated 21 January 2020 the appellant withdrew its request for oral proceedings and requested a decision on the state of the file. The appellant

requested remittal of the case to the first instance unless the board was "prepared to grant the application". The appellant submitted a new main request labelled "Main Request A" and identified passages in the description which, in the appellant's view, provided direct and unambiguous support for the feature "*for routing to an external display*" of claim 1 of the first auxiliary request and for the feature "*to route the single composite output signal to an external display*" of claim 1 of the second auxiliary request.

IX. During a telephone conversation between the appellant's representative and the registrar on 27 January 2020, the representative informed the registrar that the appellant would not be represented at the oral proceedings.

X. Oral proceedings before the board were held on 28 January 2020 in the absence of the appellant.

The chair noted that, in its letter dated 21 January 2020, the appellant had requested that the decision under appeal be set aside and the case be remitted to the department of first instance for further prosecution, unless the board set the decision under appeal aside and granted a European patent on the basis of the sets of claims on file.

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

XI. Claim 1 of "Main Request A" reads as follows:

"Apparatus comprising:

at least one video processing engine that receives a plurality of input signals and which produces a plurality of output signals, wherein the video processing engine comprises a mix effects unit (10) and a cross-point matrix (11);

at least one embedded multi-previewer (17) within the apparatus for receiving at least some of the plurality of the video processing engine input signals and some of the plurality of video processing engine output signals and for producing a single output signal coupled to the cross-point matrix (11) and to a display and which when displayed yields a mosaic of individual images, the individual images representative of a respective input signal and a respective output signal; and

links coupling at least some inputs and some outputs of the at least one video processing engine to the multi-previewer (17)."

Claim 6 of "Main Request A" reads as follows:

"The apparatus according to claim 1 wherein the multi-previewer (17) is embedded within the mix-effects engine (10)."

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

"A video production apparatus comprising:

a cross-point matrix (11) that receives a plurality of input signals;

a mix effects engine (10') coupled to the cross-point matrix (11) and configured to produce a plurality of output signals that are fed back to the cross-point matrix (11);

at least one multi-previewer (17) within the apparatus for receiving at least some of the plurality of the plurality of input signals and some of the plurality of output signals processed by the mix effects engine (10') and for producing a single composite video output signal that re-enters the cross-point matrix (11) for routing to an external display and when displayed on the external display yields a mosaic of individual images that are representative of at least one output signal from the mix effects engine (10') and at least one input signal to the cross-point matrix (11)."

XIII. Claim 1 of the second auxiliary request is worded as follows:

"A video production apparatus comprising:

at least one video processing engine that receives a plurality of input signals and which produces a plurality of output signals, wherein the video processing engine comprises a mix effects engine (10, 10') and a cross-point matrix (11);



at least one multi-previewer (17) within the apparatus for receiving at least some of the plurality of the video processing engine input signals and some of the plurality of video processing engine output signals and for producing a single composite output video signal that re-enters the cross-point matrix (11); and

links coupling at least some inputs and some outputs of the at least one video processing engine to the multi-previewer (17), where the input signals of the multi-previewer are any signal internal to the apparatus, including input signals not associated with the mix effects engine,

wherein the cross-point matrix (11) is configured to route the single composite output video signal to an external display and which when displayed yields a mosaic of individual images that include one individual image that represents an input signal not associated with the mix effects engine (10, 10') and that include one individual image that represents an output signal from the mix effects engine (10, 10')."

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

(a) The board agreed with the appellant in respect of each of the arguments presented in its grounds of appeal, but instead raised new objections heard for the first time in its summons at these second-instance proceedings. To ensure the appellant's right to be heard, remittal to the first instance was the only appropriate and fair outcome (see letter dated 21 January 2020, point 1.3).

- (b) Concerning the objection of added subject-matter in claim 6 of the main request, the exact structure of the mix-effects engine is not of importance (see description page 3, lines 8 and 9). The arrangement of Figure 1, in which the mix-effects engine includes the embedded multi-previewer, is not essential but provides a particular advantage as set out in the description on page 4, lines 30 to 37. The alternative arrangement of Figure 3, in which the multi-previewer is outboard of the mix-effects engine, is equally not essential (see description page 5, lines 7 to 14) to achieve the advantages provided by the invention, namely the generation of a single composite video signal that includes a mosaic of images, as also emphasised on page 6, lines 11 to 13. The embodiments of Figure 1 and Figure 3 are not mutually exclusive. A person skilled in the art can combine them and is even encouraged to do so by the description on page 5, lines 15 to 19 (see letter dated 2 January 2020, points 3.1 to 3.8).
- (c) There is direct and unambiguous support for the amended feature "*for routing to an external display*" in claim 1 of the first auxiliary request; see the description page 5, lines 4 to 12 and lines 20 to 26 (see letter dated 21 January 2020, points 3.1 to 3.4).
- (d) There is direct and unambiguous support for the amended feature "*to route the single composite output video signal to an external display*" in claim 1 of the second auxiliary request; see the description page 5, lines 4 to 12 and lines 20 to 26 (see letter dated 21 January 2020, points 4.1 to 4.4).

## **Reasons for the Decision**

1. The appeal is admissible.
  
2. *Order of the requests submitted by the appellant*
  - 2.1 In its latest letter dated 21 January 2020 the appellant requested "a decision on the state of the file" and furthermore stated: "... to ensure the appellant's right to be heard, remittal to the first instance is the only appropriate and fair outcome. We therefore respectfully request remittal unless the Board is prepared to grant the application".
  
  - 2.2 The board understands these statements to mean that the board should examine whether a European patent can be granted with the application documents on file, and that it should remit the case to the department of first instance only if it comes to a negative conclusion regarding the grant.
  
  - 2.3 According to Article 111(1) EPC, "*Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.*" Once the board has examined whether the decision under appeal can be upheld, it has discretion in selecting the way of deciding on it. If in the present case the board exercises its discretion in deciding on the merits of

the case itself, then the request for remittal will have no purpose.

2.4 In the course of the examination as to whether the appeal is allowable it has become clear that the decision under appeal cannot be upheld. This is because the requests on which the decision was based are no longer relevant. Rather, the appellant filed a new main request and two new auxiliary requests, together with a new "Main Request A" (see points VI and VIII above).

2.5 In this respect the board notes that it is established case law that an appeal may be found allowable and the case remitted to the department of first instance following substantial amendments to claims or following fundamental deficiencies in the first-instance proceedings (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2018, hereinafter "Case Law", V.A.7.6, V.A.7.7).

2.6 In view of the above, the board will first deal with the question of how to exercise its discretion under Article 111(1) EPC in line with the statements in point 2.4 above.

### 3. *Remittal of the case to the first instance*

3.1 According to Article 111(1) EPC the board has the discretion to rule on the case itself or to remit the case to the department of first instance for further prosecution of issues it has not decided on (see decision G 10/93 of the Enlarged Board of Appeal, OJ EPO 1995, 172, Reasons points 4 and 5).

In the present case, the board finds that all relevant facts have been presented and the case is ready for decision.

- 3.2 Article 11 RPBA 2020 further specifies: "*The Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so. As a rule, fundamental deficiencies which are apparent in the proceedings before that department constitute such special reasons.*"

The board sees no fundamental deficiencies in the proceedings before the examining division. The appellant has not provided any argument in this respect either.

- 3.3 Concerning the appellant's argument that its right to be heard needs to be ensured, it is undisputed that the board communicated its objections to the appellant more than two months ahead of the oral proceedings and thus within the time frame set by Rule 115(1) EPC.
- 3.4 Moreover, with the letter dated 2 January 2020 in reply to the summons, the appellant submitted further requests and supporting arguments. The board sent out a communication dated 20 January 2020 to provide the appellant with the requested feedback concerning the new requests. The appellant replied with the letter dated 21 January 2020, filing a new main request and submitting further arguments. Hence, not only has the appellant been given the right to be heard, it has also actively made use of it.
- 3.5 Turning to the nature of the objections, the board finds that its objection under Article 123(2) EPC

concerned the relatively simple issue of whether two embodiments were mutually exclusive. The appellant could be expected to deal with this objection within the set time frame, and it did so.

Regarding the objection under Article 56 EPC it should be noted that the closest prior-art document (D4) remained the same, as did the identified difference between the subject-matter of claim 1 and the disclosure of document D4. No further documents were introduced; the argument why the subject-matter of claim 1 did not involve an inventive step over the disclosure of document D4 was merely changed. Again, the appellant could be expected to deal with this modified objection under Article 56 EPC within the set time frame, and it did so.

- 3.6 For these reasons the board finds that the case does not need to be remitted to the first instance to ensure the appellant's right to be heard.
- 3.7 Concerning the appellant's argument that "remittal to the first instance is the only appropriate and fair outcome", the board notes that it is established case law that Article 111(1) EPC does not imply an absolute right to have an issue decided on at two instances (see Case Law, V.A.7.2). In the present case, fairness of the proceedings is guaranteed by the board having raised its objections twice, at points in time which gave the appellant the possibility to consider the objections and respond accordingly.
- 3.8 In view of the above, the board exercises its discretion under Article 111(1) EPC in deciding on the case itself. To this end it raises objections which are within the competence of the examining division.

4. *Main request - added subject-matter (Article 123(2) EPC)*
- 4.1 According to Article 123(2) EPC, "*the European patent application ... may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed*". It is established case law that this legal provision means that any amendment to the parts of a European patent application relating to the disclosure (the description, claims and drawings) can only be made within the limits of what a person skilled in the art would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of these documents as filed (Case Law, II.E.1.1). In particular, features pertaining to separate embodiments may not be combined in order to artificially create a particular embodiment with a combination of features which is not disclosed in the application as filed (Case Law, II.E.1.6.1).
- 4.2 The amendments to claim 1 carried out by the applicant include the following formulations: "*the video processing engine comprises a mix effects unit (10) and a cross-point matrix (11)*" and "*at least one embedded multi-previewer [...] for producing a single output signal coupled to the cross-point matrix (11)*". It is undisputed that these amendments are based on the second embodiment since this is the only embodiment having a cross-point matrix and the only embodiment in which an output signal of the multi-previewer is fed back.

- 4.3 It is undisputed that claim 6 of the main request depends on claim 1 and is related to the first embodiment set out in Figure 1, in which the multi-previewer is embedded within the mix-effects engine.
- 4.4 The first and the second embodiment are mutually exclusive in the sense that in the first embodiment the multi-previewer is embedded within the mix-effects engine whilst in the second embodiment the multi-previewer is outboard of the mix-effects engine (see description page 5, lines 31-33: "*Unlike the multi-previewer 17 of Fig. 1 which is embedded within the mix-effects engine, the multi-previewer 17 of Fig. 3, by virtue of being outboard of the mix-effects engine 10 can combine signals from other elements within the video switcher 100.*").
- 4.5 Hence, the board finds that, due to the amendments to claim 1, claim 6 (although its own wording is the same as original claim 7) contains a combination of features mixing the first and second embodiment, and this combination is not disclosed in the application as filed.
- 4.6 The appellant argued that the skilled person would understand that the feature of "*the multi-previewer being outboard of the mix-effects engine*" of the second embodiment was not essential to achieve the main goal of the invention, namely to generate a single composite video signal that includes a mosaic of images.

The appellant cited the description page 5, lines 18 to 19, stating: "*... a well constructed system may contain the embodiments of both methods.*"



On this basis, the appellant argued that the embodiments of Figure 1 and Figure 3 were not mutually exclusive and that a person skilled in the art could combine them and was even encouraged to do so.

- 4.7 The board is not convinced by these arguments for the following reasons.

Claim 1 specifies that the multi-previewer receives input and output signals of the video processing engine, which comprises a mix-effects unit and a cross-point matrix.

If the multi-previewer is embedded within the mix-effects engine, as specified in claim 6, it can only receive signals from within this mix-effects engine.

Hence, it is contradictory for the multi-previewer to be embedded within the mix-effects engine but at the same time to receive input and output signals from the video processing unit comprising the mix-effects unit.

- 4.8 The board finds that the sentence in the description on page 5, lines 18 to 19, according to which a well-constructed system can include elements of both embodiments, is merely a general statement without any specific disclosure of how to combine the two embodiments. The board sees no way of constructing a system in which a multi-previewer is simultaneously embedded in and outboard of the mix-effects engine.

- 4.9 In conclusion, the board finds that claim 6 of the main request specifies a specific combination of features which is not disclosed in the application as filed, and therefore does not meet the requirements of Article 123(2) EPC.

4.10 In the letter dated 21 January 2020 (see point 2.1) the appellant submitted the new main request A discussed above in points 4.1 to 4.9. The appellant did not state explicitly whether this new main request A replaced the previous main request. In any case, the new main request A and the previous main request contain the same amendments to claim 1 and the same dependent claim 6 as set out in the aforementioned points. Hence, the same objection under Article 123(2) EPC applies to the previous main request.

5. *First auxiliary request - added subject-matter (Article 123(2) EPC)*

5.1 Claim 1 contains the following amended feature:  
*"producing a single composite video output signal that re-enters the cross-point matrix (11) for routing to an external display".*

5.2 As a basis for this amended feature the appellant cited the description page 5, lines 4 to 12, which includes the following statement: *"The output of the multi-Previewer could re-enter into the cross-point matrix 11 for further routing and/or go directly to an external monitor".*

5.3 The board interprets this passage of the description as setting out three different options, namely:  
(a) routing,  
(b) go directly to an external monitor, or  
(c) routing and go directly to an external monitor.

The board sees no disclosure that routing means routing to an external display.

It may be argued that the word "*directly*" implies that "*routing*" is meant as an indirect way to an external monitor. However, the board finds that this is only one possible interpretation and not a direct and unambiguous disclosure.

- 5.4 As a further basis for said amended feature the appellant cited the description page 5, lines 20 to 26, stating for example: "*the multi-previewer 17 can combine signals appearing on any of the cross-point matrix inputs into a single signal for viewing on a monitor (not shown)*".

The board finds that this passage of the description contains no relevant disclosure concerning routing via the cross-point matrix to an external display.

- 5.5 The description page 3, line 32 to page 4, line 2 reads: "*In addition to, or in place of the control room monitor, the output signal of the multi-previewer can get routed to one or more display devices within one or more video production apparatus (not shown)*".

This passage of the description mentions routing to a display device within a video production apparatus.

However, claim 1 defines a "*video production apparatus*" and "*routing to an external display*". In a normal understanding of claim 1, an "*external display*" is not part of or within the "*video production apparatus*", but rather is external to it.

Hence, the board finds that said passage of the description cannot be a basis for the amended feature either.

- 5.6 The appellant did not cite any other passage in support of disclosure of the amended feature, nor is the board aware of any further pertinent passage.
- 5.7 In view of the above, the board finds that claim 1 of the first auxiliary request does not meet the requirements of Article 123(2) EPC.
6. *Second auxiliary request - added subject-matter (Article 123(2) EPC)*
- 6.1 Claim 1 of the second auxiliary request contains the following amended feature: *"the cross-point matrix (11) is configured to route the single composite output video signal to an external display"*.
- 6.2 As a basis for this amended feature the appellant again cited the description page 5, lines 4 to 12 and lines 20 to 26.
- 6.3 For the same reasons as set out in points 5.2 to 5.6 above, the board concludes that neither the passages cited by the appellant nor any other passages of the description provide a basis for the feature of routing to an external display.
- 6.4 In view of the above, the board finds that claim 1 of the second auxiliary request does not meet the requirements of Article 123(2) EPC.

7. *Conclusion*

None of the appellant's requests is allowable.  
Therefore, the board cannot set the decision under appeal aside. As a consequence, the appeal is to be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

C. Kunzelmann

Decision electronically authenticated