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**Datasheet for the decision
of 14 December 2016**

Case Number: T 2151/14 - 3.5.03

Application Number: 03754762.7

Publication Number: 1550310

IPC: H04H20/16, H04N7/16, H04N7/24,
H04N7/173

Language of the proceedings: EN

Title of invention:

METHOD AND SYSTEM FOR EMULATING AN HTTP SERVER THROUGH A
BROADCAST CAROUSEL

Patent Proprietor:

Opentv, Inc.

Opponent:

Headword:

Emulating an http server/OPENTV

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - added subject-matter (no)

Decisions cited:

G 0001/93, G 0003/14

Catchword:



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Case Number: T 2151/14 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 14 December 2016

Appellant: Opentv, Inc.
(Patent Proprietor) 275 Sacramento Street
San Francisco, CA 94111 (US)

Representative: Lemans Consulting S.A.
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Respondent:
(Opponent)

Representative:

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted on 4 July 2014
revoking European patent No. 1550310 pursuant to
Article 101(3)(b) EPC.

Composition of the Board:

Chairman F. van der Voort
Members: T. Snell
O. Loizou

Summary of Facts and Submissions

- I. This appeal was lodged by the proprietor against the decision of the opposition division revoking European patent No. EP 1 550 310.
- II. An opposition had originally been filed by joint opponents on the grounds of Article 100(a), (b) and (c) EPC. The joint opponents then however withdrew their opposition. Subsequently, the opposition division informed the proprietor that it would continue the opposition of its own motion, and eventually decided to revoke the patent on the ground that the subject-matter of claim 1 of the auxiliary request did not comply with Article 123(2) EPC (cf. the ground for opposition pursuant to Article 100(c) EPC). The main request was not admitted to the proceedings.
- III. With the statement of grounds of appeal, the appellant and sole party to these appeal proceedings filed a set of claims 1 to 26 and requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of these claims. Oral proceedings were requested if the board intended to confirm the revocation of the patent.
- IV. Claim 1 reads as follows:
- "A method for emulating an http server in a broadcast network, the method comprising:
- receiving a broadcast signal via a broadcast path (52) from a broadcast carousel (50), the broadcast signal comprising a carousel of modules forming data and a carousel directory (112) that identifies resources which are available via the broadcast path (52);

- pre-fetching a part of the modules forming data received by a television receiver (54), into a television receiver's memory;
- receiving a request for a resource from an application program, said request being in a uniform format that may be used to request resources from either the broadcast path or a point-to-point path, wherein the application program executes on the television receiver (54);
- if the requested resource is in the television receiver's memory, retrieving the resource from said memory and providing it to the application program; in the negative event,
- accessing the carousel directory (112) in response to receiving the request, and searching the accessed carousel directory (112) to determine whether the requested resource is available via the broadcast path (52);
- obtaining the resource via the broadcast path (52), in response to determining the resource is available via the broadcast path (52); and
- obtaining the resource from a point-to-point path (58) if the resource is not available in the broadcast path (52)."

Reasons for the Decision

1. *Claim 1 - Articles 100(c) and 123(2) EPC*
- 1.1 The features of claim 1, considered feature by feature in isolation, are considered to be supported by the application as filed as indicated below (citations refer to the application as published (WO 2004/028119 A)):

A method for emulating an http server in a broadcast network (cf. claim 1), the method comprising:

- receiving a broadcast signal via a broadcast path (52) from a broadcast carousel (50), the broadcast signal comprising a carousel of modules forming data and a carousel directory (112) that identifies resources which are available via the broadcast path (52) (cf. the description, page 5, lines 23-26, page 6, lines 3-14, and Figs. 2 and 3);
- pre-fetching a part of the modules forming data received by a television receiver (54), into a television receiver's memory (this feature is supported by the description at page 13, line 40, whereby a pre-fetched resource may be an HTML page, in combination with page 7, line 10, whereby the service may consist of several pages, and page 5, lines 20-25, according to which modules consist of smaller data portions of data corresponding to web pages);
- receiving a request for a resource from an application program, said request being in a uniform format that may be used to request resources from either the broadcast path or a point-to-point path, wherein the application program executes on the television receiver (54) (cf. page 12 lines 8-10);
- if the requested resource is in the television receiver's memory, retrieving the resource from said memory and providing it to the application program (cf. page 14, lines 7-8); in the negative event (see points 1.2 to 1.7 below),
- accessing the carousel directory (112) in response to receiving the request, and searching the accessed carousel directory (112) to determine whether the requested resource is available via the broadcast path (52) (Fig. 9, steps 450 and 452, and page 12, lines 16-26);

- obtaining the resource via the broadcast path (52), in response to determining the resource is available via the broadcast path (52) (idem); and
- obtaining the resource from a point-to-point path (58) if the resource is not available in the broadcast path (52) (idem).

1.2 The main question to be answered with respect to Article 123(2) EPC is whether or not the application as filed provides a direct and unambiguous support for the causal link, brought about by the words "in the negative event", between not finding the resource in the memory (following pre-fetching a part of the modules forming data) and subsequently obtaining resources from the broadcasting path and, if not available in the broadcast path, from the point-to-point path. The opposition division held that there was no direct and unambiguous disclosure of this combination of steps (cf. point 16.15 of the impugned decision).

1.3 The board however does not agree with the opposition division for the following reasons.

1.4 The term "pre-fetching" clearly means, in the present context, that resources are read into the television memory without requiring a request, so that the resource is available in the memory before a request is made (cf. page 14, lines 4-7). As stated in the description, "if the application 302 requests one of the resources in memory, it can be retrieved from memory and provided to the application program 302. The resource can be provided to the application 302 without having to take the time to retrieve the resource from one of the transmission paths" (board's emphasis, cf. page 14, lines 7-10). From this passage, it is implicit

that pre-fetching occurs before the application needs the resource, and that this step would be carried out first before any attempt to obtain the resource from one of the two transmission paths.

- 1.5 Further, on page 13, lines 39-40 it is stated: "In addition to handling resource requests, the interface module 300 can also support pre-fetching of resources" (board's emphasis). In this respect, "handling resource requests" clearly refers to the obtaining of resources from either the broadcast path or the point-to-point path following a request from an application program as discussed in relation to Figs. 7-9 in the immediately preceding section of the description at page 11, line 28 ff. Consequently, obtaining resources that have been pre-fetched to the memory and obtaining resources from either of the transmission paths are intended to co-exist in the same system.
- 1.6 Finally, when considering the disclosure in its entirety, it will be noted that it is a basic tenet that not every resource that is required by an application can be stored in the television memory (cf. page 6, lines 15-17). It is also a basic idea of the patent application that any data not currently in memory can be obtained from the carousel on the broadcast path, when needed (cf. e.g. page 5, lines 14 and 15 and 34-37), or by implication, from the point-to-point path (cf. Fig. 9). The skilled person would understand that these principles apply also when pre-fetching is supported. Any other interpretation, in the board's view, is to be rejected as implausible. It follows that if a resource is not obtainable from the memory as a result of pre-fetching, it can be obtained

from the respective transmission paths in the manner claimed.

1.7 Consequently, the board considers that claim 1 complies with Article 123(2) EPC.

2. *Claim 1 - Article 123(3) EPC*

2.1 The amendments to claim 1 with respect to claim 1 as granted are all of a limiting nature, with the exception that the term "publishing" in connection with the server has been omitted.

2.2 In the application as filed, the term "published" in connection with the server appears to be used, at least in a technical sense, as a synonym for "made available" (cf. page 1, lines 21-22), which, however, is an implicit function of a server. Beyond this, in its broadest interpretation, the term "publishing" in claim 1 as granted has no technical significance (i.e. it can refer to the commercial ownership of a document). This term can therefore be omitted without infringing Article 123(3) EPC (cf. G 1/93, OJ EPO 1994, 541, point 4 of the reasons).

2.3 Consequently, claim 1 complies with Article 123(3) EPC.

3. *Claim 1 - Article 84 EPC*

At least as far as the amendments to claim 1 which were made post-grant are concerned (these amendments being the only features which may be examined for clarity, cf. G 3/14, OJ EPO 2015, A102), the board has no objections to raise under Article 84 EPC.

4. *Conclusion*

The ground for opposition pursuant to Article 100(c) EPC, insofar as invoked against independent claim 1, does not prejudice maintenance of the patent as amended. It follows that the decision under appeal is to be set aside. In order that both the remaining claims and the remaining grounds for opposition can be considered by the opposition division, the case is remitted for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution on the basis of claims 1 to 26 of the request filed on 3 November 2014.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated