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**Datasheet for the decision
of 24 July 2019**

Case Number: T 0973/15 - 3.5.07

Application Number: 09177618.7

Publication Number: 2312462

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:

Systems and methods for summarizing photos based on photo information and user preference

Applicant:

CyberLink Corp.

Headword:

Summarising photos/CYBERLINK

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (no) - mixture of technical and non-technical features

Decisions cited:

T 0643/00



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Case Number: T 0973/15 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 24 July 2019

Appellant: CyberLink Corp.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on
17 December 2014 refusing European patent
application No. 09177618.7 pursuant to
Article 97(2) EPC**

Composition of the Board:

Chairwoman M. Blasi
Members: P. San-Bento Furtado
M. Jaedicke

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examining Division to refuse European patent application No. 09177618.7 for lack of inventive step (Articles 52(1) and 56 EPC) in the subject-matter of all claims of a sole request over prior art document D6: US 2004/0161224 A1, published on 19 August 2004.

In the statement of grounds of appeal, the appellant requested that the decision be set aside and that a patent be granted on the basis of the claims considered in the decision under appeal. Oral proceedings were requested as an auxiliary measure.
- II. In a communication accompanying a summons to oral proceedings, the Board expressed its preliminary opinion that the subject-matter of the claims lacked inventive step over the disclosure of document D6. The features distinguishing the subject-matter of claim 1 from the prior art were considered to reflect non-technical aims.
- III. The appellant did not reply in writing to the Board's preliminary opinion.
- IV. Oral proceedings were held on 24 July 2019. At the end of the oral proceedings, the chair pronounced the Board's decision.
- V. The appellant's final requests were that the contested decision be set aside and that a patent be granted on the basis of the set of claims underlying the decision under appeal.

VI. Claim 1 reads as follows:

"A method for generating a summary of photos from a plurality of received photos (115) taken by a digital camera (107), **characterized by** the steps of:

classifying the received photos (115) into at least two categories according to predefined attributes, wherein the predefined attributes comprise face information;

receiving through a controller on a user interface one or more criteria for generating a summary of photos according to a user preference, wherein the one or more criteria comprises a target ratio of photos for the categories in the summary of photos, wherein the target ratio comprises a specified percentage of photos for the categories that makes up a target number of summary photos;

selecting from among photos in each of the categories according to received criteria;
and

generating the summary of photos by selecting one or more subsets of the selected photos for each of the at least two categories."

Reasons for the Decision

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

Invention

2. The present application concerns the generation of a summary of photos from a plurality of received photos to assist a user in organising and searching through a large volume of photos. This is particularly useful when more photos covering an increasing number of

events are continuously added to an individual's archive (see paragraphs [0002] and [0003] of the application as filed).

2.1 The summary of photos is generated by classifying received photos into categories according to predefined attributes, selecting photos from among the photos in each category and generating an album, which corresponds to the summary of photos, for displaying the selected photos. The photos are selected on the basis of a user specified target ratio, or percentage of the number, of photos for each of the categories in the summary of photos (paragraphs [0004] to [0006], claim 8 as filed).

2.2 The categories can relate, for example, to whether the photos are indoor, outdoor, night or day photos or whether the photos comprise geographic location, time, food, photo quality or photos of scenery; the categories can also be based on the presence of a plurality of individuals, only a single individual, or a specific individual (claim 4 as filed).

In some embodiments a time analysis is performed to cluster the photos in groups which are later on used for selecting photos for the photo summary (paragraphs [0030] and [0031]).

Inventive step - claim 1

3. Document D6 discloses a method for extracting a predetermined number of images from a large amount of image data to create a photo album (abstract, paragraphs [0047] and [0048]). The image data is stored in folders, one for each category (paragraph [0050]). In each folder, the image data is stored in chronological order (abstract, paragraph [0050]). To

create a photo album, the images are divided by date into a predetermined number of groups. The user may specify the number of images to be extracted from each group or the number of images for creating the album (paragraphs [0093] and [0098]). Then a number of images is extracted from each group and the extracted images are arranged in an album (paragraphs [0053], [0074], [0075] and [0093], Figure 2).

During the oral proceedings, the appellant argued that document D6 only taught building groups of images on the basis of time information, which was very different from the invention. Face information could not be used to summarise data. However, the Board disagrees that the method of document D6 is very different from the present invention. In document D6, as in the method of claim 1, the photos are classified into categories for the same purpose of creating a photo album.

- 3.1 In the decision under appeal, the subject-matter of claim 1 was considered to differ from the method of document D6 in that
- (a) the predefined attributes (on the basis of which the photos are classified) comprise face information; and
 - (b) the criteria (for selecting photos) comprise a target ratio, i.e. a specified percentage of photos for each of the categories in the summary of photos.

In the statement of grounds of appeal, the appellant, on the one hand, recognised that features (a) and (b) were the features distinguishing the claimed invention from the disclosure of document D6 (see point III.1 of the statement of grounds of appeal and page 2 of the minutes of oral proceedings before the Examining Division). On the other hand, the appellant argued,

under point 2 of the statement of grounds of appeal, that document D6 did not disclose the features of the characterising part, which includes all the steps of the claimed method, and that the objective technical problem was to provide a method and system to allow the user to automatically create a summary of photos from a large collection of photos based on individual user preferences.

These arguments of point 2 of the statement of grounds of appeal are not convincing. The method of document D6 includes steps of classifying photos, receiving criteria, selecting photos and generating a summary. It allows the user to generate a summary of photos based on individual user preferences, as explained in point 3 above. The Board therefore confirms the appealed decision's novelty analysis and agrees that features (a) and (b) are the distinguishing features.

- 3.2 In the oral proceedings, the appellant argued that the distinguishing features were technical. The appellant gave an example of a method to control a blisterstrips packaging machine to create blisterstrips with specific ratios of pills with different colours, for instance, 30% white and 70% blue, by automatic detection of the pills with different colours. There was no difference between choosing a percentage of pills with a specific colour and a percentage of photos containing or not containing faces. It was not clear why a method based on recognising pills with different colours should be considered technical but not the invention.

These arguments are not persuasive. Document D6 already discloses a method of generating a photo album with a specified number of images from each group of images. Thus, whether the claimed method is technical as a

whole is irrelevant. The distinguishing features are not comparable with the example given by the appellant because claim 1 does not specify how photos are classified according to face information. Moreover, the Board has not decided, and does not have to decide, which features of such a method of recognising pills would be considered to make a technical contribution and why. Therefore, no conclusion can be derived from comparing the present invention with such a hypothetical case.

- 3.3 At the oral proceedings, the appellant cited decision T 643/00 of 16 October 2003 in support of the technical character of the distinguishing features.

In decision T 643/00, an arrangement of images was considered to be determined by technical considerations aimed at enabling the user to search and select an image in a computer system (see reasons 6 and 15 to 18). The same rationale does not apply in the present case because the automatic selection based on some criteria is already known from document D6, and the photos are not arranged to provide a more efficient search tool in an interactive process as in the case underlying decision T 643/00. Claim 1 does not specify steps of using the summary of photos once it is generated, and the selection of photos is arbitrary within a category. The summary of photos is used for presentation to the user, and distinguishing feature (a) contributes only to the non-technical purpose of adapting the presented photo album to the preferences of a user or audience. Feature (b) regards the non-technical aspect of expressing the distribution of elements of different categories and is an obvious alternative to a feature of the method disclosed in document D6. In particular, it is well known that a

distribution of elements across different categories can be specified by either the absolute number of elements in each category, as is done in the method of document D6, or by the percentage of elements in each category, as described in feature (b).

The appellant also argued that the two distinguishing features had the surprising synergistic effect of allowing the user to create individual slide shows, photo books and intelligent photo albums which could not be created before and which could be automatically created in different ways for different audiences.

However, in the present invention, the decision of which photos to include in a photo album is determined by non-technical considerations regarding which type of photos different persons like to see and which photographic content should be presented to different audiences. The claim does not specify any non-obvious details of an implementation of the distinguishing features. There is no synergistic effect, especially not a technical one.

The distinguishing features do not contribute to the technical character of the claimed invention and cannot contribute to inventive step.

3.4 Consequently, the subject-matter of claim 1 is not inventive (Articles 52(1) and 56 EPC).

4. *Conclusion*

Since claim 1 of the sole request on file is not allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



I. Aperribay

M. Blasi

Decision electronically authenticated