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**Datasheet for the decision
of 11 September 2019**

Case Number: T 1578/15 - 3.5.07

Application Number: 06251322.1

Publication Number: 1703425

IPC: G06F17/30

Language of the proceedings: EN

Title of invention:

Information processing system, information generating apparatus
and method

Applicant:

Sony Corporation

Headword:

Playlist generation/SONY

Relevant legal provisions:

EPC Art. 56

EPC R. 103(1) (a)

Keyword:

Inventive step - (no)

Reimbursement of appeal fee - (no)



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Case Number: T 1578/15 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 11 September 2019

Appellant: Sony Corporation
(Applicant) 1-7-1 Konan
Minato-ku
Tokyo (JP)

Representative: D Young & Co LLP
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 5 January 2015
refusing European patent application
No. 06251322.1 pursuant to Article 97(2) EPC**

Composition of the Board:

Chairman R. Moufang
Members: P. San-Bento Furtado
R. de Man

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examining Division to refuse European patent application No. 06251322.1 for lack of inventive step in the subject-matter of claim 1 of a main and a first auxiliary request over prior-art document D1: EP 1 515 340 A1, published on 16 March 2005.

The Examining Division considered that the claimed subject-matter comprised technical and non-technical features, and that the skilled person starting from the disclosure of document D1 would arrive at the invention by means of ordinary programming.

In an *obiter dictum*, the Examining Division expressed the opinion that neither request fulfilled the requirements of Article 123(2) EPC.

- II. In the statement of grounds of appeal, the appellant filed a new main request and maintained the requests considered in the appealed decision as first and second auxiliary requests. The appellant requested that the decision be set aside and that a patent be granted on the basis of the main request or the first or second auxiliary request.

The appellant contended that the Examining Division had committed a substantial procedural violation because the decision's reasoning was inconsistent and ignored arguments presented by the applicant.

- III. In a communication accompanying a summons to oral proceedings, the Board expressed the view that the broad definition of the system in claim 1 of the main request raised questions about the technical

contribution of some features. The Board expressed doubts that the subject-matter of claim 1 of the main request was inventive over two general purpose computers, or over two notoriously known content management systems. The subject-matter of claim 1 of each of the requests, even when read in light of the description, was not inventive over the disclosure of document D1.

The Board indicated that it intended to deal with the substantive issues of the present case in accordance with the appellant's request for the grant of a patent. If the appeal were not allowable due to the lack of inventive step of the claimed subject-matter, a decision on whether a substantial procedural violation had occurred would not have any procedural consequences and would not change the outcome of the appeal proceedings.

- IV. In a letter of reply the appellant maintained the main request, submitted a new set of claims as a first auxiliary request, and maintained the previous first and second auxiliary requests as second and third auxiliary requests.
- V. Oral proceedings were held as scheduled. At the end of the oral proceedings, the chairman pronounced the Board's decision.
- VI. The appellant's final requests were that the decision under appeal be set aside, that a patent be granted on the basis of the claims of the main request or, in the alternative, of one of the first, second and third auxiliary requests, and that the appeal fee be reimbursed.

- VII. Claim 1 of the main request reads as follows:
"An information processing system having an information generating apparatus (1-1) and an information processing apparatus (1-2),
the information generating apparatus (1-1) comprising:
storage means (11) for storing a first list of content for managing grouped content; and
generating means (12) for generating metadata information for use by the information processing apparatus (1-2), the metadata information including metadata of the content to be managed by the first list of content,
the information processing apparatus (1-2) comprising:
acquiring means (21) for acquiring search metadata information satisfying predetermined search conditions from the metadata information generated by the information generating apparatus (1-1); and
creating means (22) for determining on the basis of the search metadata information whether each content with metadata included in the search metadata information acquired by the acquiring means is included in a second list of content in the information processing apparatus (1-2), thereby creating the third list of content from the determination by the creating means (22) and in which a distinction is made between content included and not included."
- VIII. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that "by" was replaced with "of" in "determination by the creating means (22)", and in that the following text was added at the end of the claim:

"display control means (24) for displaying information indicative of whether each content included in the third list of content is stored in the information processing apparatus (1-2) along with information about each content included in the third list of content, wherein the display control means (24) is configured to display a button to be operated to access a seller of content as information indicative that the content is not stored in the information processing apparatus (1-2)."

- IX. Claim 1 of the second auxiliary request differs from claim 1 of the main request in that the text starting with "creating means" at the end of the claim reads as follows:

"creating means (22) for determining on the basis of the search metadata information whether each piece of content with metadata included in the search metadata information acquired by the acquiring means is stored in the information processing apparatus (1-2), thereby creating the second list of content from the metadata information acquired from the metadata information search and in which a distinction is made between pieces of content stored and not stored."

- X. Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that the following text was added at the end of the claim:

"display control means (24) for displaying information indicative of whether each piece of content is stored in the information processing apparatus (1-2) along with information about each piece of content to be managed by the second list of content on the basis of the second list of content created by the creating means, wherein the display control means (24) is configured to display a button to be operated to access

a seller of content as information indicative that the content is not stored in the information processing apparatus (1-2)."

XI. The appellant's arguments, where relevant to this decision, are addressed in detail below.

Reasons for the Decision

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

The application

2. The present application relates to the generation of playlists in a system comprising two terminals connected via the internet (Figures 1 and 9). The purpose of the invention is to facilitate the creation of playlists without information having to be entered manually, and to create playlists integrating pieces of content that are not owned with pieces of content that are owned by the user (see application as filed, page 3, lines 1 to 20; page 19, line 15, to page 20; Figure 3).

2.1 The first terminal stores playlists and generates associated metadata. The second terminal creates local playlists from metadata obtained from the first terminal. In order to create or update such a local playlist, the second terminal generates a request including search conditions and obtains "search metadata" for pieces of content matching the search conditions (page 11, lines 7 to 25; page 15, line 11, to page 16, line 16; Figure 1). Using the search metadata, the second terminal then determines for each piece of content whether it is already included in a

local content database and hence reproducible. Each piece of content is registered with the local updated or created playlist as either reproducible/owned content or as non-reproducible/buyable content (page 17, line 14, to page 18, line 5; page 28, line 13, to page 32; Figure 7).

Claim interpretation

3. The claims define generalisations of the embodiments described in the application. As acknowledged by the appellant at the oral proceedings, "list of content" is a generalisation of "playlist". The first and second terminals correspond to the "information generating apparatus" and "information processing apparatus" in the language of the claims. The content "owned and not owned" by the user corresponds in the claims to content "included and not included" in a list of content, or "stored and not stored" in the information processing apparatus.

Main request

4. *Inventive step - claim 1*
 - 4.1 In its communication pursuant to Article 15(1) RPBA, the Board expressed the view that the claim only referred to "lists of content" and did not mention any features related to content reproduction. The content could thus be any data, and the lists of content did not support the reproduction of content. Since programs for computers as such were not technical, that raised questions regarding technical contribution of some features.

However, in view of the outcome of the following assessment of inventive step starting from document D1, the question of whether individual features make a technical contribution does not have to be decided.

- 4.2 Document D1 discloses a computer network to which user computers and a track identification database are connected. The track identification database represents a master list used to uniquely identify individual tracks among multiple computer users. The network system may also include a playlist distributor for publishing and distributing globally relevant playlists to multiple user computers (paragraphs [0023] to [0025]; Figure 2). The user computers are programmed to support the download and reproduction of content and the creation and distribution of "globally relevant playlists" (paragraph [0027]).

After creating a globally relevant playlist, the playlist creator submits the playlist to a distributor, where it is made available for purchase by others. The playlist distributor may be a web site operated by the playlist creator. A playlist consumer may then purchase/download the playlist from the playlist distributor (paragraph [0040]).

In this embodiment, the user computer of the playlist creator/distributor is an "information generating apparatus" and the user computer of the playlist consumer is an "information processing apparatus" comprising acquiring means for acquiring metadata information from the information generating apparatus.

The global playlist is downloaded, so that a copy of the playlist is created in the consumer's user computer. The local copy of the globally referenced

playlist is a list of content created locally in the consumer's user computer like the "third list of content" of claim 1.

The Board agrees with the appellant that document D1 does not disclose a third list including a subset of the content items of the global playlist. However, in the system of D1 a differentiation is made between content stored and not stored in the user computer ("included and not included"). In particular, document D1 discloses that a globally relevant playlist may include optional information for (i) identifying where a particular track is located on the local computer, and (ii) indicating a source from where a track may be obtained if it is inaccessible/unavailable to a user's computer (paragraphs [0034] and [0035]). In order to play the content in a user computer, the globally relevant playlist is opened on the user computer, and then it is determined whether the selected track is locally available to the user computer (or computing device) for playing. If the track is not available locally, it is determined whether the user wishes to purchase the track from an identified track source (paragraphs [0041] to [0042]; Figure 5).

Therefore, the local copy of the globally relevant playlist makes a distinction between content stored and not stored locally or, in other words, between content included or not included in a second list of content (which is an implicitly disclosed list of all items stored locally). In addition, the user computer has means for determining whether the content is included or not included in the second list of content.

- 4.3 The subject-matter of claim 1 therefore differs from the system of document D1 in that
- (a) the acquiring means acquires metadata information satisfying predetermined search conditions; and
 - (b) the creating means creates the third list of content as a list of the content items obtained by the search (instead of merely creating a local copy of the globally referenced playlist).
- 4.4 In its reply and at the oral proceedings the appellant did not contest the result of the above novelty analysis, but argued that the distinguishing features provided content list creation with increased flexibility.

For the purpose of assessing inventive step, the Board accepts that the distinguishing features solve the problem of providing the user/consumer with a (flexible) way of creating a personalised playlist from global playlists in the system of document D1.

The appellant argued that it would not have been obvious to include the distinguishing features in the system of D1. Using metadata stored in the playlist to allow content to be identified based on predetermined search conditions as in features (a) and (b) went against the teaching of document D1. In the system of D1, a globally unique identifier was used to identify each track in a globally relevant playlist. This was not only to ensure consistent track identification across different computers but also to reduce the storage space required for each instance of the globally relevant playlist, since the globally unique identifier would be used to link to metadata stored elsewhere (the appellant cited paragraph [0021] of D1).

The Board does not find that argument convincing. Paragraph [0021] cited by the appellant does not teach that the globally unique identifier is or should be the only information stored for a track. In fact, document D1 also discloses storing metadata such as title or artist for each track (paragraph [0031], Figure 3). Such metadata could be used in searches according to search conditions as defined in feature (a).

At the priority date of the present application, personal playlists and searching content on the basis of search conditions, e.g. artist name, were notoriously known (see e.g. paragraph [0004] of D1). It would therefore have been obvious for the skilled person facing the problem formulated above to modify the creating means of document D1 to use search conditions to obtain the metadata for the content of interest, and to generate a personalised list of content on the basis of that acquired information.

- 4.5 Therefore, the subject-matter of claim 1 does not involve an inventive step over the disclosure of document D1 (Articles 52(1) and 56 EPC).

First auxiliary request

5. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that it adds the following features

(c) "display control means for displaying information indicative of whether each content included in the third list of content is stored in the information processing apparatus along with information about each content included in the third list of content, wherein the display control means is configured to

display a button to be operated to access a seller of content as information indicative that the content is not stored in the information processing apparatus."

6. *Inventive step - claim 1*

6.1 At the oral proceedings, the appellant argued that features (c) provided a better user interface allowing a more flexible interaction with the playlist. In the system of document D1 the user had to play through the entire playlist in order to acquire individual items of content. A synergy with distinguishing features (a) and (b) existed because the overall flexibility of the system was enhanced.

However, the problem of creating personalised playlists is unrelated to the problem of improving flexibility in acquiring individual items of a playlist. Features (c) serve a different function and can be adopted in the system of D1, which already supports acquiring remote tracks when the playlist is played, independently of features (a) and (b). Therefore, no synergy can be recognised. The Board is of the opinion that the additional features of claim 1 of the first auxiliary request solve a different independent problem, that of improving the selection of an individual track to purchase.

6.2 Displaying information regarding pieces of content of a playlist for selection by the user and for content reproduction is notoriously known in the context of software applications for content management and reproduction. Buttons for activating functions are a notoriously known standard component of graphical user interfaces.

As a matter of ordinary user-interface design, the skilled person seeking to improve the selection of items of the global playlist to purchase would therefore have considered providing a notoriously known list of items and buttons to the seller of content. The skilled person would thus have provided the download/purchase functionality known from document D1 in the form of display control means as described in features (c).

- 6.3 Therefore, the subject-matter of claim 1 of the first auxiliary request does not involve an inventive step (Articles 52(1) and 56 EPC).

Second auxiliary request

7. Claim 1 of the second auxiliary request differs from claim 1 of the main request essentially in that it refers to "content stored and not stored in the information processing apparatus" instead of "content included and not included" and in that it does not mention that the determination of whether content is stored or not stored is made by using a content list. It therefore does not mention a feature corresponding to the "second content list" of the main request (the "second content list" of the second auxiliary request corresponds to the "third content list" of the main request).
- 7.1 In its inventive-step reasoning given above for claim 1 of the main request, the Board has interpreted "included" as referring to the second list of content, and the second list of content as the list of the content items present in the information processing device. The reasons given above for claim 1 of the main

request thus apply *mutatis mutandis* to claim 1 of the second auxiliary request

- 7.2 Therefore, the subject-matter of claim 1 of the second auxiliary request is not inventive (Article 56 EPC).

Third auxiliary request

8. Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that it further specifies features corresponding essentially to features (c) above. The claim additionally specifies that displaying is performed "on the basis of the second list of content created by the creating means".

As explained above for the second auxiliary request, the "second list of content" in claim 1 of the third auxiliary request corresponds to the "third list of content" of the main and first auxiliary requests.

9. *Inventive step - claim 1*

- 9.1 For the reasons given for the first auxiliary request, it would be obvious for the skilled person to add features (c) to the system of document D1 to improve the selection of an individual track to be purchased.

Arguably, features (c) implicitly specify that displaying is performed "on the basis of the second [third] list of content created by the creating means". In any case, it is an obvious programming option to use the list of content with information regarding whether each piece of content is locally stored for implementing the display functionality of features (c).

- 9.2 Therefore, the subject-matter of claim 1 of the third auxiliary request also does not involve an inventive step (Articles 52(1) and 56 EPC).

Conclusion and reimbursement of appeal fee

10. Since none of the requests are allowable, the appeal is to be dismissed.
11. The appellant requests reimbursement of the appeal fee due to an alleged procedural violation. In the statement of grounds of appeal, it argued that the decision under appeal had not taken into account the applicant's arguments and included two inconsistent lines of reasoning. That made it difficult to prepare the grounds of appeal, as the appellant had not been able to identify which elements of the appealed decision it should respond to when requesting the decision to be overturned.

According to Rule 103(1)(a) EPC, the appeal fee shall be reimbursed in full where the Board deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

In the present case, the requests on file lack inventive step over document D1, which was also considered in the inventive-step reasoning of the decision under appeal. Since the appeal is not allowable, the appeal fee is not to be reimbursed and the Board does not have to decide whether a substantial procedural violation occurred.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



I. Aperribay

R. Moufang

Decision electronically authenticated