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**Datasheet for the decision
of 1 October 2021**

Case Number: T 2021/15 - 3.5.01

Application Number: 10759444.2

Publication Number: 2414959

IPC: G06F15/163, G06F9/46, G06F3/14,
                            H04N7/26

Language of the proceedings: EN

Title of invention:
IMAGE COMPRESSION ACCELERATION USING MULTIPLE PROCESSORS

Applicant:
Microsoft Technology Licensing, LLC

Headword:
Parallel video encoding/MICROSOFT

Relevant legal provisions:
EPC R. 137(5)
RPBA 2020 Art. 11

Keyword:
Amendments - compliance with Rule 137(5) EPC (yes - amended
claims relate to the same general inventive concept as at
least one of the originally filed claims)
Remittal to the department of first instance - special reasons
(yes)

Decisions cited:
T 0708/00

Case Number: **T 2021/15 - 3.5.01**

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 1 October 2021

Appellant: (Applicant)	Microsoft Technology Licensing, LLC One Microsoft Way Redmond, WA 98052 (US)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 6 May 2015 refusing European patent application No. 10759444.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	W. Chandler
Members:	A. Wahrenberg
	C. Schmidt

Summary of Facts and Submissions

I.   This is an appeal against the decision of the examining
        division to refuse the European patent application No.
        10759444.2.

II.   The examining division found that the subject-matter of
        claim 1 of the main request lacked an inventive step
        (Article 56 EPC) over the disclosure of D1
        (US 2008/310739 A1). The auxiliary request was not
        admitted for the reason that it related to unsearched
        subject-matter which did not combine with the
        originally claimed invention to form a single general
        inventive concept (Rule 137(5) EPC).

III.   In the statement setting out the grounds of appeal, the
        appellant requested that the decision of the examining
        division be set aside and that a patent be granted on
        the basis of the refused main or auxiliary request,
        both filed on 20 March 2015.

IV.   In a communication pursuant to Rule 100(2) EPC, the
        Board agreed with the examining division's assessment
        that the invention in claim 1 of the main request
        lacked an inventive step over D1. As for the auxiliary
        request, the Board considered Rule 137(5) EPC not to be
        applicable, and indicated that the case would likely be
        remitted to the examining division for further search.

V.   In a letter of reply, the appellant stated that the
        main request would no longer be maintained if the Board
        remitted the auxiliary request to the examining
        division with an order to perform a search and provide
        an opinion. The precautionary request for oral

proceedings was withdrawn under those conditions.

VI.   Claim 1 of the auxiliary request reads:

A method for compressing a plurality of images (310) on
a system (302) with a plurality of processors
comprising:
    dividing (402) each image of the plurality of
images into a plurality of slices (312);
    for each of at least two processors (308),
associating (404) a thread per processor;
    assigning (406) each slice to an associated thread;
    for each slice, when the associated thread is
executed on its corresponding processor, compressing
the slice; and
    sending each compressed slice along with an
indication of which image it belongs to and where it
belongs to within the image from a server of the system
to a client, wherein slices from multiple images are
sent interleaved.

VII.   Claim 1 as originally filed reads:

A method for compressing an image (310) on a system
with a plurality of processors comprising: dividing
the image into a plurality of slices (312) (402);
    for each of at least two processors (308),
associating a thread per processor (404);
    assigning each slice to an associated thread (406);
    for each slice, receiving an indication that the
slice has been processed (408); and
    assembling the slices into a second image, the
second image corresponding to the image being
compressed (410).

VIII.   Claim 13 as originally filed reads:

The system of claim 12, wherein sending each processed
slice to a client comprises:
    sending each slice with a corresponding indication
of what part of the image that slice represents.

Reasons for the Decision

1.   The examining division did not admit the auxiliary
         request for the reason that it related to unsearched
         subject-matter which did not combine with the
         originally claimed invention to form a single general
         inventive concept (Rule 137(5) EPC).

2.   The examining division assessed whether an objection of
         lack of unity under Article 82 EPC would have arisen
         had the claims of the auxiliary request been present in
         the originally filed claim set. The assessment was
         based on a comparison between claim 1 of the auxiliary
         request and claim 1 as originally filed. Those claims
         were said to lack a technical relationship involving
         the same or corresponding special technical features
         (Rule 44 EPC).

3.   It might well be that the examining division was right
         in that there is no general inventive concept linking
         claim 1 of the auxiliary request and claim 1 as
         originally filed. However, this is moot because claim 1
         of the auxiliary request has at least one special
         technical feature in common with claim 13 as originally
         filed, namely *"sending each slice with a corresponding
         indication of what part of the image that slice
         represents"*. This feature relates to the embodiment in

which slices may be sent out of order and assembled by
the client (see paragraph [0037] of the published
application). Thus, there is no lack of unity between
claim 1 of the present auxiliary request and claim 13
as originally filed.

4.   Rule 137(5) EPC (first sentence) reads:

        *"Amended claims may not relate to unsearched
        subject-matter which does not combine with the
        originally claimed invention or* <u>*group of inventions*</u>
        *[emphasis added] to form a single general inventive
        concept."*

        When rejecting amended claims as inadmissible under
        this rule, it is not enough to show that an objection
        of lack of unity would have arisen if the amended
        claims had been part of the original claim set. It must
        be shown that the amended claim lacks unity with all
        claims in the original claim set, because each claim is
        part of the originally claimed "group of inventions".
        In other words, if there is unity with at least one of
        the original claims, Rule 137(5) EPC (first sentence)
        does not apply (see T 708/00 - *Transmission frame/
        ALCATEL*, Headnote I).

        Since claim 1 of the auxiliary request relates to the
        same general inventive concept as claim 13, Rule 137(5)
        EPC (first sentence) does not apply.

5.   The search covered claim 13 as originally filed and
        should therefore have covered claim 1 of the present
        auxiliary request. This subject-matter is therefore not
        "unsearched" in the sense of Rule 137(5) EPC.
        Nevertheless, the examining division apparently
        considered this subject-matter to be unsearched (see

point 12.9 of the decision under appeal). Furthermore, claim 1 of the auxiliary request contains further features of the embodiment in paragraph [0037] that were not present in the originally filed claims. Therefore, a further search might be necessary. This constitutes a special reason for remitting the case in the sense of Article 11 RPBA 2020.

Order

For these reasons it is decided that:

1.   The decision of the examining division is set aside.

2.   The case is remitted to the examining division for further prosecution on the basis of the auxiliary request filed on 20 March 2015.

The Registrar: The Chairman:

T. Buschek   W. Chandler

Decision electronically authenticated